

86JMMANT

Martinez - direct

1 Q. How about victim's name?

2 A. I put the victim names on mine. Again, I can't say what
3 everybody else does.

4 Q. In your experience, sir, does every case file have some
5 identifying characteristic on it other than, for example, the
6 detective's name who is working on it?

7 MR. ZUCKERMAN: Objection, your Honor.

8 THE COURT: Overruled.

9 A. Again, I could say what I do.

10 THE COURT: Only tell us what you do. If you don't
11 know what other people do, we don't want you to guess.

12 Q. Sir, when you spoke with Walter Cobb on February 12,
13 2001 -- I'll direct your attention to Exhibit 1 -- did he tell
14 you he heard four gunshots, correct?

15 A. Yes, sir.

16 Q. And he said he heard two gunshots and then two more,
17 correct?

18 A. Yes, sir.

19 Q. And you also spoke with an Officer Alex Perez that same
20 day, correct?

21 A. Yes, sir.

22 Q. Did Alex Perez ever advise you that Mr. Cobb only told him
23 he only heard one gunshot?

24 A. Not to my knowledge. I'd have to see the DD5 if you have
25 that, please.

86JMMANT

Martinez - direct

1 THE COURT: Ladies and gentlemen, I don't want you to
2 get the wrong idea when I talked about review. Any good lawyer
3 makes sure all his witnesses review all the evidence before
4 they testify so that in fact they know what it is they are
5 going to be asked questions about. That's just common sense,
6 but I want to be sure you didn't think there was anything wrong
7 with it.

8 Q. Sir, I'll show you what's been marked as Exhibit 5 in
9 evidence. Sir, did you create this document?

10 A. Yes, sir.

11 Q. And when did you create it?

12 A. I would say some time after 8 p.m. on the 12th.

13 Q. February 12, 2001?

14 A. Correct.

15 Q. And is this document a conversation you had with Officer
16 Alex Perez?

17 A. Yes, sir.

18 Q. By the way, Officer Alex Perez spoke with Walter Cobb
19 before you did, correct?

20 MR. ZUCKERMAN: Objection, your Honor.

21 THE COURT: If you know.

22 A. I don't know.

23 Q. Maybe if you could review your own DD5, Exhibit 1, it might
24 refresh your recollection. I'll withdraw the question.

25 Withdrawn.

86JMMANT

Martinez - direct

1 Sir, according to Alex Perez, isn't it true that
2 Mr. Cobb didn't initially say anything about Anthony
3 Manganiello coming out of the basement?

4 A. I'm sorry. I was reading it when you were talking. Can
5 you repeat it.

6 Q. According to what you documented in Exhibit 5 -- according
7 to Exhibit 5, Alex Perez -- strike that.

8 According to Exhibit 5, isn't it true that Walter Cobb
9 did not say anything to Officer Alex Perez about Anthony
10 Manganiello coming out of the basement doors after he heard
11 shots?

12 MR. ZUCKERMAN: Objection to form, your Honor.

13 THE COURT: Overruled. If you understand the
14 question, you can answer it. If you don't, he will rephrase.

15 A. According to this, no, there is nothing about any
16 conversation.

17 Q. Well, does Exhibit 5 document that Officer Alex Perez did
18 in fact have a conversation with Walter Cobb?

19 A. Yes. I apologize. I'm looking at the bottom line here.

20 Q. Isn't it true that Mr. Cobb didn't say anything to Officer
21 Perez about Mr. Manganiello coming out of a basement door,
22 according to Exhibit 5?

23 MR. ZUCKERMAN: Objection, your Honor.

24 THE COURT: Take your time. Overruled.

25 A. According to this, no.

86JMMANT

Martinez - direct

1 Q. But in your document, document you created, Exhibit 1, it
2 says that Walter Cobb did in fact see Anthony Manganiello
3 coming out of the basement door after he heard shots, correct?

4 A. Correct.

5 Q. By the way, did you take handwritten notes of what Officer
6 Perez told you?

7 A. Yes.

8 Q. What happened to those notes?

9 A. I took those notes, transferred them exactly onto the DD5s
10 that I typed, then attached that to the DD5, and it goes to the
11 case detective.

12 Q. And after you gave it to the case detective did you ever
13 see those notes again?

14 A. No, sir.

15 Q. Would you agree those notes were evidence?

16 MR. ZUCKERMAN: Objection, your Honor.

17 MR. JOSEPH: I'll rephrase it.

18 Q. Sir, were the handwritten notes that you took evidence?

19 MR. ZUCKERMAN: Objection, your Honor.

20 THE COURT: I think everybody understands what
21 evidence means. Maybe you should rephrase the question.

22 Q. Sir, did you view the handwritten notes that you took from
23 Officer Perez as a record of what occurred?

24 MR. ZUCKERMAN: Objection, your Honor.

25 THE COURT: Overruled.

86JMMANT

Martinez - direct

1 A. Yes.

2 Q. In your view, was that something that should have been
3 maintained and preserved for later use?

4 MR. ZUCKERMAN: Objection, your Honor.

5 THE COURT: Overruled.

6 A. Yes.

7 Q. Now, sir, did you also interview a gentleman named Richard
8 Huello, a Verizon employee?

9 A. Yes.

10 Q. Did Mr. Huello tell you that he was already in the basement
11 working when Mr. Cobb arrived on the scene?

12 A. If I could review the DD5 to be sure, please.

13 Q. Sure.

14 Sir, I'll show you what's been marked in evidence as
15 Exhibit 4.

16 A. Thank you.

17 Q. Is this the DD5 that you created?

18 A. Yes, sir.

19 Q. And is this a DD5 in which you documented a conversation
20 with Richard Huello on February 12, 2001?

21 A. Yes, sir.

22 Q. And did Mr. Huello on February 12, 2001 tell you he was
23 already in the basement of 1700 Metropolitan Avenue when
24 Mr. Cobb arrives on the scene?

25 A. Yes, sir.

86JMMANT

Martinez - direct

1 Q. And does Mr. Huello say that he at any point saw
2 Mr. Manganiello?

3 A. No, sir.

4 Q. Did Mr. Huello say he heard shots at about the time that
5 Mr. Cobb entered the basement?

6 A. No, sir.

7 Q. In fact, he says he didn't hear any shots, correct?

8 A. Correct, sir.

9 MR. JOSEPH: Judge, I ask to move into evidence
10 Exhibit 3, a two-page document, on consent.

11 MR. ZUCKERMAN: No objection, your Honor.

12 THE COURT: Very well. If there is no objection, it
13 will be admitted before I even find it. I indeed found it. It
14 will be admitted without objection.

15 (Plaintiff's Exhibit 3 received in evidence)

16 Q. Sir, I show you what's been marked as Exhibit 3. Do you
17 recognize this?

18 A. Thank you. Yes, sir.

19 Q. And this is a two-page document, correct?

20 A. Yes, sir.

21 Q. And this is a document that you created, yes?

22 A. Yes.

23 Q. And on the second page of the document did you create a
24 sketch?

25 A. I'm sorry?

86JMMANT

Martinez - direct

1 Q. Create a sketch.

2 A. Yes.

3 Q. And it was a sketch of the area of the basement?

4 A. Yes.

5 MR. JOSEPH: Judge, with the Court's permission, for
6 demonstrative purposes, I have a blowup of Exhibit 3 --

7 THE COURT: You better show it to your adversary
8 without the jury to see if it's agreeable to him.

9 MR. ZUCKERMAN: Our only objection is he says it's a
10 blowup. We haven't seen it before.

11 THE COURT: You want some time to examine it?

12 MR. ZUCKERMAN: No objection.

13 THE COURT: Is there a number or a letter?

14 MR. JOSEPH: Judge, I'll mark it Exhibit 3-A.

15 THE COURT: 3-A is admitted without objection.

16 (Plaintiff's Exhibit 3-A received in evidence)

17 Q. Sir, can you see this from where you are?

18 THE COURT: Why don't you bring it over here in the
19 corner and maybe we can all see it -- that will be pleasant --
20 so I'm not too far away. He can step down if you want him
21 to --

22 THE WITNESS: I would rather have the jury see it.

23 THE COURT: Me, too.

24 MR. JOSEPH: Maybe I can have him step down and I can
25 do it in the middle of the courtroom if that's acceptable.

86JMMANT

Martinez - direct

1 THE COURT: Whatever you want to do.

2 MR. JOSEPH: I'll do it right here and I'll ask the
3 witness to step down.

4 Q. Is this a copy of the sketch that you drew?

5 A. Yes.

6 Q. It's fair to say it's not exactly to scale, correct?

7 A. Correct.

8 Q. The victim was found in this area, correct?

9 A. In that general area, yes.

10 Q. And Mr. Huello was in the room directly across, correct?

11 A. Yes.

12 THE COURT: Why don't you put an X next to where the
13 victim was found so we can look at it further and understand
14 what he's doing.

15 MR. JOSEPH: Judge, this is a stick figure here.

16 Q. Is this stick figure where the victim was found?

17 A. Yes.

18 Q. Is there another stick figure next to the words Verizon
19 employee?

20 A. Yes.

21 Q. Is that the general area where Mr. Huello was working?

22 A. Right on this wall there is phone boxes, like the big
23 rectangle ones against the wall. He was working on that.

24 Q. Sir, the victim was found basically in a room directly
25 across from where Mr. Huello was working, correct?

86JMMANT

Martinez - direct

1 A. Yes. In the other room across the hall, yes.

2 Q. Sir, in this proximity if there were gunshots would you
3 expect Mr. Huello to have heard them?

4 MR. ZUCKERMAN: Objection, your Honor.

5 MR. JOSEPH: I'll withdraw the question.

6 THE COURT: Good.

7 MR. JOSEPH: That's all I have with this. Thank you,
8 Judge.

9 Q. Sir, based upon the interview you conducted with Mr. Huello
10 and Mr. Cobb, did you feel that there was an inconsistency in
11 what Mr. Cobb was telling you?

12 MR. ZUCKERMAN: Objection, your Honor.

13 THE COURT: You can rephrase it so we have a little
14 more pointedness.

15 THE DEPUTY CLERK: I think we have got a witness
16 walking in.

17 MR. ZUCKERMAN: It's Mr. Colon.

18 Q. Sir, in Exhibit No. 4, did Mr. Huello tell you that when he
19 arrived on the scene that morning he heard a walkie-talkie in
20 the basement, correct?

21 A. Yes.

22 Q. And did he also tell you that he banged on a door but no
23 one responded?

24 A. Yes.

25 Q. Sir, is one of your responsibilities as a detective to make

86JMMANT

Martinez - direct

1 an assessment of the information which you're being provided?

2 A. If it is my case, regardless of what it is, it's my
3 assessment to gather all the information. If I'm assisting
4 someone on a case, it's not my -- again, the way I feel, it's
5 not up to me to make an assessment because there might be other
6 factors involved, that I haven't talked to somebody, I haven't
7 seen something, that may give reason for different stories. I
8 can only speak for myself.

9 Q. Sir, in your view, what responsibilities, if any, does the
10 lead investigator have to make an assessment of the information
11 to which he's being provided?

12 A. Well, as a lead investigator you gather all the
13 information. Like I often say, it's like a funnel. The wide
14 part of the funnel is where everything gets dumped in, all the
15 information. The small part is like where it all comes to the
16 lead investigator. He goes through or she goes through the
17 evidence and makes a decision whether to reinterview, whether
18 not to reinterview, to present to a DA, supervisor looks at it,
19 also concurs or disagrees, and it's decided then.

20 As far as assisting on a case, I don't know all the
21 factors involved. I'm assisting, so I'm a gatherer basically.
22 I'm getting as much information as I can, trying to document
23 it, and then I give it to the lead investigator.

24 Q. By the way, sir, did you speak with Mr. Abate concerning
25 what Mr. Huello and what Mr. Cobb had told you prior to

86JMMANT

Martinez - direct

1 returning to the 43rd Precinct?

2 A. Not to my recollection, no.

3 Q. By the way, sir, was Mr. Abate on the scene when you were
4 on the scene?

5 A. I believe so, yes.

6 Q. And did you have conversations with him?

7 A. Not that I remember. If I may, a lot of times when you go
8 on the scene you may not stay together. You split up to
9 maximize what you could try and accomplish with being
10 shorthanded.

11 Q. Sir, let me show you this.

12 MR. JOSEPH: I'll move into evidence, at this point,
13 Judge, what's also been marked in evidence as Exhibit 2.

14 THE COURT: 2 will be admitted without objection.

15 (Plaintiff's Exhibit 2 received in evidence)

16 Q. Sir, is this a document that you created?

17 A. Thank you. Yes. I'm sorry.

18 Q. And in this document there is a gentleman named Mr. Grimes
19 who had -- what, if anything, is shown in that exhibit, sir?

20 A. It's a complaint follow-up DD5 that I typed up regarding an
21 interview I had with John Grimes.

22 Q. What information, if any, did Mr. Grimes provide you?

23 A. It's a short paragraph. Shall I read it?

24 THE COURT: Whatever you choose.

25 A. You want me to read it, sir?

86JMMANT

Martinez - direct

1 Q. Whatever you choose.

2 A. I arrived, meaning Mr. Grimes, at work at 8 a.m., and about
3 9:30 a.m. I went outside to get coffee. I was standing in
4 front of the basement doorway. I didn't notice anything
5 unusual at all and all the doors were closed. I saw the
6 Verizon guy standing out front, and he asked me if I had a key
7 to the doors, which I didn't. I told him to go to the security
8 office. And I saw that he left in that direction, and I
9 proceeded to get coffee and returned to my work area.

10 Q. Sir, you read 9:30 --

11 A. Did I say 9:30? I apologize.

12 Q. It was actually --

13 A. 9:20 a.m.

14 Q. 9:20 a.m. Mr. Grimes arrives.

15 If Mr. Grimes had mentioned anything about seeing
16 Anthony Manganiello in the area, would you have put that in the
17 DD5?

18 A. Yes.

19 Q. But there is no mention of it, correct?

20 A. If he mentioned anybody, anything else, I would have put it
21 in.

22 Q. And did you also take handwritten notes of what Mr. Grimes
23 said?

24 A. Yes.

25 Q. Were those handwritten notes turned over to Mr. Agostini?

86JMMANT

Martinez - direct

1 A. After I typed -- copied those handwritten notes onto the
2 DD5, yes, everything was handed over.

3 Q. Have you seen those handwritten notes afterwards?

4 A. No, sir.

5 Q. Sir, I'll show you what's been marked as Exhibit 6 in
6 evidence. Sir, I am going to show you what's been marked as
7 Exhibit 6.

8 A. Thank you.

9 Q. Did you prepare that document, sir?

10 A. Yes.

11 Q. Did you prepare it on February 12, 2001?

12 A. Yes.

13 Q. And does it document an interview which you conducted with
14 Police Officers Ortiz and Rodriguez?

15 A. Yes.

16 Q. Did Officers Ortiz and Rodriguez confirm that Anthony
17 Manganiello on the morning of February 12, 2001 was with them
18 at a call at apartment 5E at 1700 Metropolitan Avenue?

19 A. Yes.

20 Q. Did these officers also tell you that Anthony Manganiello
21 seemed to be of normal demeanor?

22 A. Yes.

23 Q. And did the officers also tell you that Mr. Manganiello
24 left the building with them?

25 A. Yes.

86JMMANT

Martinez - direct

1 Q. And did you also take handwritten notes on what these
2 officers told you?

3 A. Yes.

4 Q. And what did you do with the handwritten notes afterwards?

5 A. Again, when I sit down to do my DD5s, copy the notes onto
6 that, attach it, and it's given to the case officer, case
7 detective.

8 Q. And after you gave it to the case detective, did you ever
9 see those notes again?

10 A. No.

11 Q. By the way, I'll show you Exhibit 29 in evidence.

12 A. Thank you.

13 Q. Sir, take a minute to review it, let me know when you're
14 done.

15 A. Okay.

16 Q. Now, sir, does this DD5, which Mr. Agostini prepared about
17 two weeks after your interview, attribute statements to
18 Officers Rodriguez and Ortiz that are different than what they
19 told you?

20 MR. ZUCKERMAN: Objection, your Honor.

21 THE COURT: You want to read them and then we will
22 know -- maybe if we read his, we will see what the differences
23 are.

24 MR. JOSEPH: Let me rephrase the question.

25 Q. What differences, if any, are there in the DD5 you created

86JMMANT

Martinez - direct

1 concerning your interview of Officers Rodriguez and Ortiz and
2 the DD5 that Mr. Agostini prepared?

3 MR. ZUCKERMAN: Objection, your Honor.

4 THE COURT: Why don't you first ask him whether there
5 are differences.

6 Q. Are there any differences between the two DD5s?

7 A. If you can give me one minute.

8 Q. Sure.

9 A. Thank you. Okay, sir, I'm ready.

10 Q. Are there any differences?

11 A. It has Mr. Manganiello left once they were all at the scene
12 first.

13 Q. That's Mr. Agostini's DD5, correct?

14 A. Yes.

15 Q. And your DD5 says what?

16 A. They all left and the Parkchester cop left.

17 Q. Together?

18 A. Yes.

19 Q. Sir, did you ever interview or meet with Michael Booth in
20 relation to the homicide investigation of Albert Acosta?

21 A. Not to my recollection, no.

22 Q. You're sure about that?

23 A. If there is paperwork. I don't remember. No. I'm trying
24 to -- I don't -- unless there is paperwork, I don't remember.

25 THE COURT: You don't remember unless he can refresh

86JMMANT

Martinez - direct

1 your recollection is what you mean?

2 THE WITNESS: Yes, sir.

3 Q. Sir, let me show you what's been marked as Exhibit 41 in
4 evidence. For the record, this is a three-page document. Why
5 don't you read this over and tell me if this refreshes your
6 recollection as to whether you met with a gentleman named
7 Michael Booth?

8 A. I don't remember. And being honestly, counselor, when I
9 was reviewing my notes -- and I do not mean to be disrespectful
10 when you talk about the pizza place. Snippets come to your
11 mind. And for some reason, I don't know why, and it's no
12 disrespect to the Court or to the jury, I just remember going
13 there and getting an Italian ice. I don't remember going
14 there -- you try to rattle your brain. You are going through
15 all your notes and old paperwork. That's all I remember on it.

16 Q. Let me ask you this. On the second and third page of that
17 document, is your signature there?

18 A. Yes.

19 Q. And are you witnessing a statement given by Michael Booth?

20 A. Yes.

21 Q. By the way, there are two separate statements given by
22 Michael Booth, correct?

23 A. Yes.

24 Q. And they are 10 minutes apart?

25 A. I'm looking at the times. 12:10. Sure. About that. It

86JMMANT

Martinez - direct

1 looks like it. Four minutes.

2 Q. And your signature appears on both of those documents,
3 correct?

4 A. Yes.

5 Q. Sir, is one of them your handwriting?

6 A. No. It's just my signature.

7 Q. Is it your testimony that your handwriting doesn't appear
8 on either of the written statement portions of those documents?

9 A. Absolutely not.

10 Q. Sir, on one of these documents Mr. Booth misspells
11 Mr. Manganiello's name, right? He spells it as Manganillo?

12 A. I see that.

13 Q. On the other one he spells it correctly, is that correct?

14 THE COURT: He had four minutes to think about it.

15 A. I wouldn't even know -- if you asked me now how to spell
16 his name, I'm assuming -- I don't even know how to spell his
17 name.

18 Q. On the day this statement was given did someone provide
19 Mr. Booth with the correct spelling of Mr. Manganiello's name?

20 MR. ZUCKERMAN: Objection, your Honor.

21 THE COURT: If he knows, he can answer.

22 A. I don't know. I wouldn't even know how to spell his name.
23 Now I'm looking at it, I'm assuming that this one is probably
24 right, pronunciation.

25 Q. Sir, at the point in time when you met with Mr. Booth, you

86JMMANT

Martinez - direct

1 had documents that had Anthony Manganiello's name on it,
2 correct?

3 A. I didn't, sir, no.

4 Q. Sir, didn't you in fact create documents that had
5 Mr. Manganiello's name on it? Take a look at Exhibit 1.

6 A. Yes.

7 Q. So you did in fact know how to spell Mr. Manganiello's name
8 at some point during your investigation, correct?

9 A. That's how I spelled it, yes, when I typed the DD5, yes.

10 Q. And who provided Mr. Booth, if anybody, with how to
11 correctly spell Mr. Manganiello's name?

12 A. It wasn't me. Like I said, I wish I could remember.
13 Honest to God, I don't recall this.

14 Q. And who else was present during this meeting?

15 A. I would think Detective Agostini.

16 Q. Sir, in one of the statements does Mr. Booth write out,
17 Manganiello came to me about one month ago for a rod. I said
18 that I did not fool -- and he spells it f-u-l-l -- with that
19 stuff. Is that what's written there?

20 THE COURT: On the later one.

21 A. On the later one. I'm sorry. I'm just reading -- repeat
22 the question, please.

23 Q. Sir, on one of the statements does Mr. Booth say,
24 Manganiello came to me about one month ago for a rod. I said
25 that I did not fool with that stuff and he spelled fool

86JMMANT

Martinez - direct

1 f-u-l-l, correct?

2 A. Yes.

3 Q. And he also spelled stuff s-t-u-f?

4 A. Yes.

5 Q. But on the other statements there is no spelling errors?

6 A. Correct.

7 Q. On one of the statements he spells gun g-u-n-n, right?

8 A. Yes.

9 Q. But on the other statement gun is spelled correctly?

10 A. Correct.

11 Q. So, sir, was anybody helping Mr. Booth with his statement?

12 A. Like I said, I don't -- I wish I could help you with this.

13 I don't remember. It comes to a complete blank. I don't want
14 to assume, your Honor, because --

15 THE COURT: Are could you look at the earlier one for
16 me, Detective? The earlier one is dated 12/06. Do you have
17 that one in front of you? There are only two. You can look at
18 mine. We have to move this along.

19 THE WITNESS: I'm sorry, your Honor.

20 THE COURT: You see that?

21 THE WITNESS: Yes, sir.

22 THE COURT: Do you see little initials next to some of
23 the sentences or the language?

24 THE WITNESS: Like me, m-e?

25 THE COURT: I don't know what it is. I'm only showing

86JMMANT

Martinez - direct

1 it to you in case it makes it easier for you to remember what
2 was happening and who was it happening to. I gather --

3 THE WITNESS: I don't. I really wish I did.

4 Q. Sir, by looking at these documents, it appears that one was
5 given at 12:00, correct, and another was given at 12:10 p.m.,
6 both on March 1, 2001, yes?

7 A. Correct.

8 Q. And, sir, the one that actually appears to be spelled right
9 precedes or occurred earlier than the one with all the spelling
10 errors, correct?

11 A. Correct.

12 Q. Sir, as you sit here right now, do you have a memory of
13 Mr. Booth being searched at the precinct?

14 A. No. Like I said, I wish I did.

15 Q. Do you have a memory of Mr. Booth initially saying he
16 doesn't know anything about Anthony Manganiello?

17 A. No, sir.

18 Q. Do you have a memory of Detective Agostini finding a knife
19 on Mr. Booth's person?

20 A. No.

21 Q. Do you have a memory of Mr. Agostini finding any gambling
22 slips or other criminal evidence on Mr. Booth's person?

23 A. No.

24 Q. Do you have a memory of Mr. Agostini telling Mr. Booth that
25 if he doesn't sign a statement his name will get passed on to

86JMMANT

Martinez - direct

1 the organized crime division?

2 A. No.

3 Q. Sir, in your experience, is it ever good police practice to
4 threaten a witness to get a statement?

5 MR. ZUCKERMAN: Objection, your Honor.

6 THE COURT: Sustained. I will, again, take judicial
7 notice. That would not be good police practice.

8 Q. By the way, after Mr. Booth gave this statement was he ever
9 arrested or investigated, to your knowledge?

10 A. Not to my knowledge.

11 Q. Sir, did Mr. Agostini give Mr. Booth Mr. Manganiello's
12 name?

13 A. Excuse me?

14 Q. Did Mr. Agostini provide Mr. Booth with Mr. Manganiello's
15 name.

16 THE COURT: If you know.

17 A. I don't know.

18 Q. Sir, you were there, yes?

19 A. I am going by my signature so I must have been, but I can't
20 go by my memory. That is my signature.

21 MR. JOSEPH: Your Honor, at this point I would ask to
22 move into evidence, I believe on consent, Exhibit 22.

23 THE COURT: Very well. 22 is admitted without
24 objection.

25 (Plaintiff's Exhibit 22 received in evidence)

86JMMANT

Martinez - direct

1 THE COURT: It's fair to say, Mr. Martinez, or
2 Detective Martinez, that you reviewed these notes, and neither
3 at the time of your reviewing the DD5 nor today have you any
4 recollection of a meeting with Mr. Booth, albeit your signature
5 is on the DD5?

6 THE WITNESS: No, sir, no.

7 THE COURT: Just so the record is clear, my DD5s on
8 whatever we are looking at, 27, has 12:06 and 12:10 as the two
9 times they were made. There is some confusion, I thought, in
10 this exhibit.

11 MR. JOSEPH: Judge, I wasn't able to tell if it was a
12 zero or six.

13 THE COURT: Now we know.

14 MR. JOSEPH: Your Honor, at this point I would ask to
15 move Exhibit 8 into evidence, I believe on consent.

16 (Plaintiff's Exhibit 8 received in evidence)

17 Q. Sir, I'll show you what's been marked as Exhibit 8 in
18 evidence.

19 A. Thank you.

20 Q. Do you recognize this document?

21 A. Yes.

22 Q. What do you recognize it to be?

23 A. It's a DD5, complaint follow-up report, for a request for a
24 microscopic analysis on a recovered .22 handgun.

25 Q. This is a document that you prepared?

86JMMANT

Martinez - direct

1 A. Yes.

2 Q. When did you prepare it?

3 A. On March 8, 2001.

4 Q. That's less than a month after Mr. Acosta was shot,
5 correct?

6 A. Yes.

7 Q. Sir, can you tell me, when you say recovery, does that
8 indicate a .22 caliber gun was recovered during the arrest?

9 A. Yes.

10 Q. And who was arrested?

11 A. A Cynthia Taylor.

12 Q. Where was Ms. Taylor arrested?

13 A. 1641 Metropolitan Avenue.

14 Q. That's in the Parkchester condominium complex, correct?

15 A. Correct.

16 Q. And a .22 caliber gun is the same caliber of gun used to
17 kill Albert Acosta, correct?

18 A. To the best of my knowledge, yes.

19 Q. Did you ever see the microscopic analysis come back from
20 that report?

21 A. No.

22 Q. Do you know if the microscopic analysis from that .22
23 caliber gun which was recovered in Parkchester was ever
24 received?

25 MR. ZUCKERMAN: Objection, your Honor.

86JMMANT

Martinez - direct

1 THE COURT: Overruled.

2 MR. JOSEPH: I'll withdraw it and rephrase it.

3 THE COURT: I'll sustain the objection.

4 The question is simply, do you know if it ever came
5 back to your squad?

6 THE WITNESS: No, I don't.

7 Q. If it did come back to the squad, those results would have
8 been put in the homicide file, correct?

9 MR. ZUCKERMAN: Objection, your Honor.

10 THE COURT: Sustained.

11 Q. Where would the results have been put if they did come back
12 to the squad?

13 MR. ZUCKERMAN: Objection, your Honor.

14 THE COURT: Overruled.

15 A. It goes back to the case detective.

16 MR. JOSEPH: Thank you. Nothing further.

17 THE COURT: Any cross?

18 MR. ZUCKERMAN: Yes, your Honor.

19 CROSS-EXAMINATION

20 BY MR. ZUCKERMAN:

21 Q. Detective Martinez, what was the highest rank you achieved
22 while with the NYPD?

23 A. Detective third grade.

24 Q. How long were you with the NYPD?

25 A. Twenty years.

86JMMANT

Martinez - cross

1 Q. How long were you a detective?

2 A. About 12 years.

3 Q. Are you now retired?

4 THE COURT: Excuse me just a moment. Just for my own
5 information, do you all, whether you're first, second, or third
6 grade, appear on the roster to catch homicide cases?

7 THE WITNESS: Yes, sir.

8 THE COURT: And in regular order, so it's not like
9 random, but everybody knows their niche?

10 THE WITNESS: Yeah. We have what's like a batting
11 order, and you have a list of names and it's separate from the
12 regular cases that come up each day. If I caught one last, I
13 was the last one in, you're next under the list. And the next
14 homicide that comes up --

15 THE COURT: You go to the bottom?

16 THE WITNESS: After you catch, you're back on the
17 bottom of the list.

18 THE COURT: Thank you.

19 THE WITNESS: You're welcome.

20 Q. Approximately how many cases did you handle while you were
21 a detective at the 43rd Precinct?

22 A. I'd say anywhere from around 2500 cases, which range from
23 harassments to homicides.

24 Q. In February of 2001, approximately how many investigations
25 were you involved with?

86JMMANT

Martinez - cross

1 A. Well, I'd say easily over 2,000 because I wasn't there much
2 longer after that date.

3 THE COURT: When he says involved in, I don't know
4 what he means. What do you think he means?

5 THE WITNESS: Cases that were assigned to me.

6 THE COURT: That may or may not have been concluded?

7 THE WITNESS: Meaning any case, whether it be an
8 assault, harassment, or burglary.

9 THE COURT: What I didn't understand is whether there
10 were still 2,000 open cases --

11 THE WITNESS: No. I left clean.

12 Q. How many active cases were you involved with in February of
13 2001, approximately?

14 A. Active cases, I may have had two or three homicides that
15 were still open and it might have been about 20 somewhat cases
16 that you're working on at the same time that were open. I was
17 getting about 25 cases on average a month assigned to me.

18 Q. When you interviewed a witness did you determine whether
19 the witness was telling the truth?

20 MR. JOSEPH: Objection.

21 THE COURT: Sustained.

22 Q. Did you make credibility assessments when you interviewed a
23 witness?

24 A. I just -- if there is anything peculiar or anything I'll
25 put it down on a statement, on my assessment. But if there is

86JMMANT

Martinez - cross

1 nothing that strikes me odd, I will just put down what the
2 witness had told me.

3 Q. Is there an NYPD document called a DD5?

4 A. Yes.

5 Q. Can you tell the jury what that is?

6 A. That's a complaint follow-up report. That's what we have
7 been going -- most of the testimony is on, and it basically is
8 anything that you do in pertaining to any type of case gets
9 typed onto that report and it goes with that case, that
10 particular case.

11 Q. Could you tell the jury how you prepare one?

12 A. From my notes that I've taken, whatever it may be, I take
13 each incident, each -- if it's an interview, it's looking at a
14 scene, whatever it may be, computer check, I'll take that
15 particular note and copy it onto the DD5, attach the note to
16 the DD5, and that goes with the case.

17 Q. On February 12, 2001, did there come a time that you
18 responded to the scene of a shooting in the Bronx?

19 A. Yes.

20 Q. And how were you notified of that shooting?

21 A. That, I don't recall. I really don't. I just know we
22 went, we had to go, but I don't know how we were notified or I
23 was notified.

24 Q. Were you ever lead detective with respect to the Acosta
25 homicide?

86JMMANT

Martinez - cross

1 A. No.

2 Q. How did you get to the scene of the homicide?

3 A. By car, but I don't know with who.

4 Q. What did you observe when you got there?

5 A. Just that there was uniform there, there was people milling
6 around, hanging around and watching, civilians. There was
7 people there, uniform and nonuniform.

8 Q. Did you then go into the basement?

9 A. Yes.

10 Q. Was the victim still at the scene when you got there?

11 A. I don't remember that he was there. I don't think he was
12 there, no.

13 Q. Prior to the incident on February 12, 2001, did you know
14 the plaintiff, Anthony Manganiello?

15 A. No, I did not.

16 Q. Did you encounter the plaintiff at the scene of the
17 homicide?

18 A. No, I did not.

19 Q. Did you conduct investigatory work in connection with the
20 Acosta homicide?

21 A. Yes.

22 Q. And did you conduct certain witness interviews?

23 A. Yes.

24 Q. I'm showing you Plaintiff's Exhibit 3.

25 A. Thank you.

86JMMANT

Martinez - cross

1 Q. Could you tell the jury what Plaintiff's Exhibit 3 is?

2 A. It's a copy of the DD5 that I prepared regarding an
3 interview of Walter Cobb.

4 Q. And did you interview Walter Cobb?

5 A. Yes.

6 Q. When did you interview him?

7 A. Approximately 11:15 a.m.

8 Q. On February 12, 2001?

9 A. Yes.

10 Q. And you interviewed him at the scene of the homicide?

11 A. Yes, I would believe so.

12 Q. Could you read that DD5 to the jury, please.

13 A. Both paragraphs?

14 Q. Please.

15 A. Paragraph 1: On February 12, 2001, at approximately 1115
16 hours, which is 11:15 a.m., the undersigned spoke to Walter
17 Cobb regarding what he had seen in relation to the above
18 incident. He stated the following in sum and substance: The
19 witness stated that he was working at Parkchester for around a
20 year. Furthermore, he stated that he recognized this
21 Parkchester officer, Manganiello, from working at Parkchester,
22 and he knows him -- it's probably a typo -- be by face, and
23 then for around a year. He stated that he positively
24 recognizes Officer Manganiello as a Parkchester officer that
25 exited the basement at 1700 Metropolitan Avenue after he heard

86JMMANT

Martinez - cross

1 the gunshots.

2 Q. Is there a second page to that DD5, sir?

3 A. Yeah, I believe so, yes. Should I continue?

4 Q. Please.

5 A. Paragraph 2: Walter Cobb said it was around 10:10 or so,
6 he was walking to the basement entrance and he was next to the
7 basement window while on the sidewalk when he heard four shots
8 that were muffled. There were two and then two more. He then
9 approached the basement door when it burst open and Parkchester
10 officer came rushing out. It was Manganiello who he saw.

11 I said to him, and it's quote -- this would be Walter
12 Cobb's quote -- I just heard four shots and he said, so did I.
13 He was excited looking. I'm sorry with my reading. He was
14 excited looking. He said to me, you go that way, pointing up
15 to Metropolitan Avenue towards the circle, and he took off in a
16 hurry. I saw him go up street towards the circle. I saw the
17 door was closing. I did not have the key, so I grabbed it to
18 go inside and do my work. I started working on the compactor
19 at the end of the hallway.

20 As I walked into the basement, I saw a telephone guy
21 in the other open storage room on the left side. I proceeded
22 to the compactor and started to work when the Verizon guy came
23 to me regarding a locked storage room that he needed to get
24 inside. I opened the door and we both looked inside and we
25 didn't see any telephone equipment, so we left the room. I

86JMMANT

Martinez - cross

1 left the door open. I went on doing my work.

2 I then decided to take a look inside the room. It was
3 about a minute or two later. I saw what looked like a stack of
4 clothing. The room was dark, so I was using my flashlight and
5 took a closer look. I saw a guy lying face down, there is this
6 center hole punch where I believe it says with a uniform on.
7 It might be W/A. His hat and radio was on the stove in the
8 room. And I looked close and I saw a gunshot wound to the back
9 of his head. I ran out and got the telephone guy (Verizon) and
10 we went back inside the room with him. We then left the room,
11 came outside, I called security office and there was no answer.
12 I then called 911.

13 Q. Showing you Plaintiff's Exhibit 13 in evidence --

14 THE COURT: There will be no objection.

15 MR. ZUCKERMAN: It's already in, your Honor.

16 THE COURT: Can I see that, your 13?

17 THE WITNESS: Yes.

18 MR. JOSEPH: Judge, I don't believe 13 was in
19 evidence.

20 MR. ZUCKERMAN: I'm sorry. Exhibit 5, your Honor.
21 Plaintiff's Exhibit 5.

22 THE COURT: 5 is in, but I'm not at all so clear about
23 13. I am not sure what this is.

24 Go ahead.

25 Q. Could you tell the jury what Plaintiff's Exhibit 5 is?

86JMMANT

Martinez - cross

1 A. It's a complaint follow-up report that I prepared and it's
2 an interview of PO Perez from the 43rd Precinct.

3 Q. Did you interview Officer Perez on February 12, 2001?

4 A. Yes.

5 Q. Where did you interview him?

6 A. I believe it was at the 43 station house later in that day.

7 Q. Could you read the DD5 to the jury, please?

8 A. Paragraph 1, on February 12, 2001, at approximately 2000
9 hours, which is 8 p.m., the undersigned spoke to PO Perez
10 regarding what she had seen at 1700 Metropolitan Avenue. She
11 said in sub and substance, I was at the scene when I noticed
12 the Parkchester cop emerging from the crowd. He was all messy
13 looking with white-like powder on his jacket sleeve. He was
14 red-faced and breathing heavy and had sweat on his face. I
15 then saw other officers taking him to a car. We first
16 responded to the scene on a 1013 call to 1700 Metropolitan
17 Avenue. We went inside the basement and saw the guy that was
18 shot. We did a small canvass and spoke to the maintenance guy,
19 Cobb, who heard the shots.

20 Q. Showing you Plaintiff's Exhibit 4 in evidence.

21 A. Thank you.

22 Q. Could you tell the jury what Plaintiff's Exhibit 4 is?

23 A. It's a complaint follow-up report, DD5. They an interview
24 with Richard Huello.

25 Q. And who is Mr. Huello?

86JMMANT

Martinez - cross

1 A. He is the Verizon worker.

2 Q. And from your interview with Mr. Huello did you understand
3 that Mr. Huello was in another room from where the body was
4 found?

5 A. Yes.

6 Q. And under DD5 is anything reflected about Mr. Huello
7 wearing a telephone earpiece?

8 A. Yes.

9 Q. Could you tell the jury what's reflected on the DD5 about
10 the telephone earpiece?

11 A. Give me just one second. In paragraph 2, about midway, he
12 says: He let me into the telephone room and left, which I
13 believe he means for the security -- I'll just read it. He let
14 me into the telephone room and he left. And then it goes on:
15 I went back to work and using the telephone earpiece I didn't
16 hear any shots. I then saw the maintenance guy walking by, in
17 parenthesis, Walter Cobb.

18 Q. So he's wearing a telephone earpiece, correct?

19 A. Yes.

20 Q. Showing you Plaintiff's Exhibit 22 in evidence, could you
21 identify Plaintiff's Exhibit 22 in evidence for the jury?

22 A. It's a complaint follow-up report, DD5, dated February 15,
23 2001, prepared by Detective Agostini.

24 Q. Now, there is a reference to a Sergeant Martinez on that
25 interview?

86JMMANT

Martinez - cross

1 A. Correct.

2 Q. And it indicates that a Sergeant Martinez attended that
3 interview?

4 A. Correct.

5 Q. Were you Sergeant Martinez?

6 A. No. There is an Edward Martinez that was at the precinct.

7 Q. So that wasn't you who attended that interview, correct?

8 A. No, not at all.

9 THE COURT: Is that it?

10 MR. ZUCKERMAN: Very close, your Honor, very close.

11 THE COURT: Going back to the telephone earpiece, just
12 to fill up the time, you don't know whether or not that makes
13 you hear better or more or less? You're not a telephone --

14 THE WITNESS: I don't know.

15 Q. Sir, did you ever testify before the grand jury in this
16 matter?

17 A. No, sir.

18 Q. Did you ever meet with the DA on this case?

19 A. No.

20 Q. Did you ever urge or pressure the DA to prosecute this
21 matter?

22 MR. JOSEPH: Objection.

23 THE COURT: Sustained.

24 MR. ZUCKERMAN: May I have one minute to confer?

25 THE COURT: Sure.

86JMMANT

Martinez - cross

1 Q. Sir, you never spoke to the DA about this case, correct?

2 A. Correct.

3 MR. ZUCKERMAN: I have nothing further, your Honor.

4 THE COURT: Any redirect?

5 MR. JOSEPH: Very brief, Judge.

6 THE COURT: Very, very briefly.

7 REDIRECT EXAMINATION

8 BY MR. JOSEPH:

9 Q. Sir, I am going to hand you back these exhibits for the
10 sake of brevity.

11 A. Thank you.

12 Q. Sir, on Exhibit No. 1, is the statement that you recorded
13 for Mr. Cobb quote unquote in sub and substance?

14 MR. ZUCKERMAN: Objection, your Honor.

15 Q. Does it say on Exhibit 1 --

16 THE COURT: I thought we had it already.

17 MR. JOSEPH: I'll move on.

18 Q. Sir, according to Mr. Cobb's statement that he gives you on
19 Exhibit 1 he hears gunshots, correct?

20 A. I'm just getting -- give me a minute. I'm just trying to
21 find Exhibit 1 here.

22 THE COURT: You don't have Exhibit 1?

23 THE WITNESS: I'm double checking, your Honor.

24 MR. JOSEPH: Maybe I can find it faster, Judge. It
25 appears the witness does not --

86JMMANT

Martinez - redirect

1 Q. Sir, according to your statement, though, does Mr. Cobb
2 hear gunshots, from your recollection?

3 A. Yes.

4 Q. And after he heard gunshots did he call the police?

5 A. On his statement, yes, they left and he said he called the
6 police, 911.

7 Q. He called 911 immediately after hearing the gunshots?

8 A. No.

9 Q. In fact, he hears the gunshots and he just goes back to
10 work, correct?

11 A. Yes. He was going back to the compactor and then he called
12 later.

13 THE COURT: He went back to the compactor?

14 THE WITNESS: To continue his work.

15 Q. Sir, you were also asked about Exhibit 5. Do you have
16 Exhibit 5 in front of you?

17 A. Yes, sir.

18 Q. Now, according to Exhibit 5, Officer Perez told you that
19 Cobb said he heard shots, that Mr. Cobb heard shots, correct?

20 A. Correct, sir.

21 Q. But Mr. Cobb said nothing about seeing anybody leave the
22 basement after he heard the shots, correct?

23 MR. ZUCKERMAN: Objection, your Honor.

24 THE COURT: Overruled.

25 A. No, not on this statement here.

86JMMANT

Martinez - redirect

1 Q. Sir, on Exhibit 4 you were asked some questions about an
2 earpiece. Does Exhibit 4 indicate that Mr. Huello had an
3 earpiece in only one ear?

4 A. It just has an earpiece.

5 Q. One earpiece, correct?

6 A. That's how I would interpret my own typing, yes.

7 Q. Fair enough.

8 And sir, was Mr. Huello able to see Walter Cobb as he
9 walked by?

10 MR. ZUCKERMAN: Objection, your Honor.

11 MR. JOSEPH: According to his statement.

12 MR. ZUCKERMAN: Objection, your Honor.

13 THE COURT: Overruled. If you can tell. I don't know
14 how you would be able to tell. If you can tell, you can
15 answer.

16 A. From his statement he says he went -- I then saw the
17 maintenance guy walking by.

18 Q. And was he able to hear the maintenance guy say hello to
19 him?

20 MR. ZUCKERMAN: Objection.

21 THE COURT: Overruled.

22 A. Well, there is a hallway as you walk by, as you looked at
23 that sketch, and he would -- Mr. Huello would be working -- if
24 he was in that room, the telephone room, he would be to the
25 right of the door. I think I had on the sketch which way the

86JMMANT

Martinez - redirect

1 doors open. If you happen to look or you happen to be standing
2 right in front of the door, you could see someone walking by,
3 yes.

4 Q. My question is, even though he was wearing a earpiece, was
5 he able to hear Walter Cobb say hello to him?

6 MR. ZUCKERMAN: Objection.

7 THE COURT: Overruled.

8 Q. Look at the statement, sir.

9 A. I'm just saying, it would be better if you could get him in
10 here to answer that because I didn't know if he had it in the
11 whole time or he took it off.

12 THE COURT: It's a question of whether you know of
13 your own knowledge or you have it somewhere in front of you
14 that refreshes your recollection. It's not a guessing game.

15 A. Just that -- just what I wrote down. He saw the
16 maintenance guy walking by and he said hello and they both
17 continued working.

18 Q. That means Mr. Cobb said hello to Mr. Huello, correct?

19 A. Correct.

20 Q. Sir, based on your experience as a police officer and
21 detective, did you expect that the statements of Mr. Booth
22 which you signed would have been passed on to the district
23 attorney's office, Exhibit 41?

24 A. Yes.

25 Q. And that would be in furtherance of a criminal prosecution,

86JMMANT

Martinez - redirect

1 correct?

2 MR. ZUCKERMAN: Objection, your Honor.

3 THE COURT: Sustained.

4 MR. JOSEPH: Nothing further.

5 THE COURT: You're excused.

6 (Witness excused)

7 THE COURT: What's next?

8 MR. JOSEPH: If it would please the Court, we will
9 call Matias Colon.

10 MR. ZUCKERMAN: Your Honor, with respect to Mr. Colon,
11 there is an issue that defendants really raise with the Court
12 before Colon testifies.

13 THE COURT: Why don't we have a recess and we can
14 resolve it and everybody will be happy. We will take ten
15 minutes.

16 (Jury not present)

17 THE COURT: Yes, Mr. Zuckerman. What's on your mind
18 with Mr. Colon?

19 MR. ZUCKERMAN: Mr. Colon was subpoenaed for this
20 trial by plaintiff and plaintiff's counsel.

21 THE COURT: He was what?

22 MR. ZUCKERMAN: Mr. Colon was subpoenaed to appear.
23 And subsequent to his being subpoenaed we had the opportunity
24 and did interview Mr. Colon. When we interviewed Mr. Colon he
25 recalled an incident involving Mr. Manganiello where three

86JMMANT

1 weeks before the homicide Mr. Manganiello and Mr. Colon were in
2 a basement in one of the buildings in Parkchester and Mr. Colon
3 said that Mr. Manganiello pulled out a .22 caliber pistol and
4 fired it at the ceiling.

5 So as your Honor will recall, Mr. Manganiello
6 testified during his examination that he never carried a gun
7 while on patrol at Parkchester, that he never fired a gun while
8 at Parkchester, that he never purchased a .22 caliber pistol,
9 and we wanted to bring this important testimony to your Honor's
10 attention because we didn't want just do it without bringing it
11 to your attention, and we believe it's absolutely relevant and
12 important and it's a witness that the plaintiff has subpoenaed
13 here to the trial, and he has important information that bears
14 on the issues in this case. We would request that information
15 be allowed to be elicited during Mr. Colon's testimony.

16 MR. JOSEPH: Judge, this is a complete surprise.
17 There has never been a single DD5 which indicates this. I
18 don't know where this is coming from. It is not anywhere in
19 any Parkchester record. Frankly, I don't even know how this
20 could occur. He's a dispatcher. This smells and wreaks of
21 fraud.

22 MR. ZUCKERMAN: He's a dispatcher on the day of the
23 incident. That's not his only position. He's an officer, an
24 SPO, just like Mr. Manganiello, and he had patrol duties on
25 other days. The testimony is not that Mr. Manganiello fired a

86JMMANT

1 .22 caliber pistol in the basement at the building in
2 Parkchester on the day of the incident.

3 The purported testimony would be three weeks before
4 the incident they were in a basement, Mr. Colon and
5 Mr. Manganiello, and that Mr. Manganiello pulled out a .22
6 caliber pistol and fired it at the ceiling. That would be his
7 purported testimony based upon my interview with Mr. Colon just
8 last week.

9 THE COURT: Why don't you bring him in and talk to
10 him.

11 MR. ZUCKERMAN: Thank you.

12 THE COURT: How long ago was it that you talked to
13 Mr. Colon last?

14 MR. JOSEPH: Judge, I've never spoken with Mr. Colon
15 concerning the substance of his testimony. I'm just looking at
16 his trial testimony. This wasn't mentioned in his trial
17 testimony at all.

18 THE COURT: Did you talk to him to prepare for his
19 testimony here today?

20 MR. JOSEPH: No, not at all. I issued an subpoena
21 based on what he testified to at trial and this wasn't in it.
22 And now, all of a sudden, he speaks with the defense lawyers
23 and he comes up with a story. We didn't speak to him. The
24 only thing we spoke to him about was scheduling.

25 THE COURT: Here he is. Let's see what he says to me.

86JMMANT

1 MATIAS COLON, sworn.

2 THE COURT: We have just heard about some new
3 testimony that you're prepared to give us. It has to do with
4 an event that happened three weeks prior to the homicide. Will
5 you review that with me.

6 MR. COLON: Yes.

7 THE COURT: This is a good time?

8 MR. COLON: Sure.

9 THE COURT: I'm listening.

10 MR. COLON: You refresh my memory and relate what was
11 it about.

12 THE COURT: If I understand the Corporation Counsel
13 correctly and the plaintiff's attorney, while you never
14 testified to anything like this before, you did in fact testify
15 to a gunshot being fired three weeks before the homicide.

16 MR. ZUCKERMAN: Your Honor, he has never testified to
17 it. He relayed that to me in an interview.

18 MR. COLON: I don't remember the date, but it happened
19 before the events that took place in February 12, 2001. In
20 regards to the defendant, while we were patrolling in the south
21 section area, he invited me to show me a gun.

22 THE COURT: The plaintiff you're talking about?

23 MR. COLON: Yes.

24 THE COURT: What's his name?

25 MR. COLON: Officer Manganiello.

86JMMANT

1 THE COURT: Go ahead.

2 MR. COLON: So we went to the basement. I followed
3 him to the basement. It was in the East Avenue in the south
4 section of Parkchester. We went to one of the rooms in the
5 basement and he pulled out a .22.

6 THE COURT: How did you know?

7 MR. COLON: It was small. I didn't take it in my
8 hands and look at it, but it was a small revolver. And he
9 fired against the wall and, you know, I said, what are you
10 crazy? What if it ricochets and hits me. He laughed. But
11 going back, it was in the wintertime, maybe two, three weeks
12 before the incident that happened on the 12th. He put his gun
13 back into his jacket, and we left.

14 THE COURT: Mr. Joseph, you want to ask him any
15 questions?

16 MR. JOSEPH: Sir, did you ever tell any police officer
17 this happened?

18 MR. COLON: I was never asked.

19 MR. JOSEPH: But you were interviewed by police
20 officers, correct?

21 MR. COLON: No, not really.

22 MR. JOSEPH: You were never interviewed by police
23 officers?

24 MR. COLON: I testify in court during the trial.
25 That's it.

86JMMANT

1 MR. JOSEPH: By the way, did you tell the Court this
2 when you testified at trial?

3 MR. COLON: No. Because I wasn't asked.

4 MR. JOSEPH: And if you had this information did you
5 tell the district attorney that you knew about this?

6 MR. COLON: If I would have been asked.

7 MR. JOSEPH: Sir, your job was a dispatcher, correct?

8 MR. COLON: On the 12th, February 12?

9 MR. JOSEPH: Yes.

10 MR. COLON: 2001, yes.

11 MR. JOSEPH: For how long were you a dispatcher?

12 MR. COLON: Just that one day. I was not assigned
13 permanently to that post. They had regular dispatchers. I was
14 just taking -- I was assigned that day because the female that
15 was dispatching was off.

16 MR. JOSEPH: How often did you patrol Mr. Manganiello?

17 MR. COLON: Several times.

18 MR. JOSEPH: The officers -- that means as an officer,
19 Parkchester officer, it was your duty to report crimes,
20 correct?

21 MR. COLON: Correct.

22 MR. JOSEPH: And did you ever report Mr. Manganiello
23 firing a gun in a dispatch to anybody?

24 MR. COLON: I didn't consider myself a snitch. I
25 wasn't going accuse anybody, fellow officers, so I kept it to

86JMMANT

1 myself.

2 MR. JOSEPH: But you didn't make any report of this,
3 correct?

4 MR. COLON: No.

5 MR. JOSEPH: And you actually testified in the
6 criminal trial, yes?

7 MR. COLON: Yes.

8 MR. JOSEPH: And why didn't you tell the court there
9 this?

10 MR. ZUCKERMAN: Objection, your Honor.

11 THE COURT: Overruled. We are just trying -- just
12 relax, Mr. Zuckerman. If you want him to testify, relax. If
13 you don't, then you should keep objecting.

14 MR. ZUCKERMAN: I apologize, your Honor.

15 MR. COLON: What was the question?

16 MR. JOSEPH: Why didn't you tell the Court in 2004
17 that this event --

18 MR. COLON: 2001.

19 MR. JOSEPH: You testified in court in 2004, right?

20 MR. COLON: Oh, yes, that's right.

21 MR. JOSEPH: And in 2004, why didn't you tell the
22 court that this happened?

23 MR. COLON: Like I said, I didn't want to add anything
24 unless I'm asked on my own.

25 MR. JOSEPH: How did it come about that you told Mr.

86JMMANT

1 Zuckerman this story?

2 MR. COLON: Because he interviewed me about different
3 things and then I remembered that.

4 MR. JOSEPH: What, if anything, did Mr. Zuckerman say
5 to cause you to remember this?

6 MR. COLON: What was that?

7 MR. JOSEPH: What, if anything, did Mr. Zuckerman say
8 that caused you to remember this?

9 MR. COLON: Going through the details of things that
10 happened over that period, that year.

11 MR. JOSEPH: But you never told this to any police
12 officer, correct?

13 MR. COLON: No. Because I was never interviewed by a
14 police officer.

15 THE COURT: Do you know any of the defendants here,
16 police officers?

17 THE WITNESS: I was ordered to testify the day of the
18 trial, but I was never interviewed.

19 THE COURT: You don't know any of them from any other
20 occasions?

21 THE WITNESS: No, sir.

22 MR. JOSEPH: Sir, were you given any money when you
23 met with Mr. Zuckerman?

24 MR. COLON: No.

25 MR. JOSEPH: Were you given anything else?

86JMMANT

1 MR. COLON: No.

2 MR. JOSEPH: Did Mr. Zuckerman in any way suggest that
3 you make a statement?

4 MR. ZUCKERMAN: I'm sorry. I didn't hear the
5 question.

6 MR. COLON: No. I didn't even know how to say that.

7 MR. JOSEPH: You didn't know what?

8 MR. COLON: I didn't even know that I had to testify
9 to that. I just found out now.

10 MR. JOSEPH: Sir, are you familiar with guns?

11 MR. COLON: Yes. I used to be a police officer.

12 MR. JOSEPH: When were you a police officer?

13 MR. COLON: From 1964 to 1972.

14 THE COURT: Had you did you come to leave the
15 department?

16 THE WITNESS: I got sick. I got West Nile virus. I
17 was lucky to survive.

18 MR. ZUCKERMAN: Your Honor, I am not sure I heard
19 that, but I understand Mr. Colon's background. He was a police
20 officer in Puerto Rico?

21 THE WITNESS: Yes, sir.

22 MR. JOSEPH: Judge, I believe that's all the questions
23 I have.

24 I do have an application, though.

25 THE COURT: Mr. Zuckerman, do you have anything you

86JMMANT

1 want to ask him?

2 MR. ZUCKERMAN: No, I don't, your Honor.

3 THE COURT: You're excused.

4 (Witness excused)

5 THE COURT: Sit in the witness room where you came
6 from, and we will call you momentarily.

7 Yes, Mr. Joseph, what's your application?

8 MR. JOSEPH: Your Honor, my application is to preclude
9 any of this testimony from being offered. I think the Court
10 has previously determined that any character evidence of
11 plaintiff while at Parkchester would be precluded. I think the
12 defendant certainly had a good-faith obligation to bring this
13 to the Court's attention prior to today and they failed to do
14 so.

15 Further, this wreaks of perjury. The man was in fact
16 interviewed by -- I'm looking for the DD5 now. He was in fact
17 interviewed by police officers. He never said it. He didn't
18 say it to the district attorney. He didn't say it at trial.

19 Now, seven years after the fact he has a conversation
20 with the defense lawyers and the story emerges. It's entirely
21 prejudicial. He was not identified for this purpose as having
22 any relevant information prior to today and this is literally
23 popping up mid-trial. It's entirely prejudicial. This is
24 trial by ambush, it's unfair surprise, and the Court -- the
25 defendants put in numerous motions, motions in limine

86JMMANT

1 concerning character evidence. This was never raised and now
2 all of a sudden it's being raised at the time, and we
3 subpoenaed him to testify strictly as the operator to offer
4 testimony that he gave at trial. This is so far afield from
5 anything this witness has ever said in the past, it's
6 tantamount to perjury.

7 THE COURT: First of all, in terms of the exclusions,
8 they are based primarily on the length of time between this
9 alleged homicide and the event. This happened to have occurred
10 three weeks before. That really would not have been excluded.

11 Second of all, if in fact you want to have a
12 deposition, we are going to adjourn early today, we will be
13 sure he's available for you to have a deposition at 5:00 right
14 here in the courthouse, or wherever else you choose to have
15 one.

16 But going to the core of the topic, if you're calling
17 him, it seems to me that there is every reason in the world why
18 there should have been, in my view, more preparation by the
19 Corp. Counsel, but in this instance enough for this witness
20 preparation, and I think it does go to credibility and my view
21 is that it goes pretty directly since the testimony was from
22 your client pretty much what Mr. Zuckerman has said it was.

23 I am not clear what it really does in terms of the
24 four or five elements of malicious prosecution, but I'm
25 prepared to give you the afternoon or evening with him and have

86JMMANT

1 him come by first thing in the morning if that makes you feel
2 more comfortable, or if you think you'll find out some reason
3 why I shouldn't allow him during that period of time, assuming
4 we have another witness.

5 MR. JOSEPH: I would like the opportunity to take his
6 deposition, Judge. Further, I would also move to preclude
7 based on relevance. He says that the police never knew about
8 it. This is a malicious prosecution case based upon --

9 THE COURT: If we are going to give you the time, you
10 can also write me a letter as well as I'm sure Corp. Counsel
11 can on the grounds we should exclude it. We don't have to do
12 both. We will take five minutes and Corp. Counsel, who now
13 seems to know him better, and the two of you can go in and tell
14 him that the judge has directed him to be available at 4:30 for
15 a deposition.

16 MR. JOSEPH: Judge, I guess we need a court reporter.

17 THE COURT: I don't know. We will try and work it out
18 so we don't waste anybody's time or money. Both of you better
19 find somebody to call the assistant district attorney to tell
20 her she knows to be here at 10:00 in the morning.

21 MR. ZUCKERMAN: I will call her, your Honor.

22 (Recess)

23 (Jury present)

24 THE COURT: Do you have another witness? Who is it?

25 MR. JOSEPH: Harry Scott, your Honor.

86JMMANT

1 HARRY SCOTT,

2 called as a witness by the Plaintiff,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. JOSEPH:

6 Q. Good morning, Mr. Scott.

7 A. Good morning, sir.

8 Q. Sir, on February 12, 2001, were you employed by the City of
9 New York?

10 A. Yes, I was.

11 Q. In what position.

12 A. I was a lieutenant with the New York City Police
13 Department.

14 Q. Sir, from when to when were you assigned to the 43rd
15 Precinct?

16 A. Roughly, the year 2001.

17 Q. From 2001 until when?

18 A. Until the end of 2001.

19 Q. And, sir, while you were at the 43rd Precinct, were there
20 any procedures in place for maintaining case files,
21 specifically homicide case files?

22 A. Yes, there was.

23 Q. What were the procedures?

24 A. To the best of my recollection, when a detective had a
25 homicide case file, they would work on it during the day, and

86JMMANT

Scott - direct

1 at the end of their tour they would put it in a file folder in
2 a storage room, or they would put it on the supervisor's desk
3 for review.

4 Q. Sir, what procedure, if any, was there for maintaining the
5 handwritten interview notes that detectives took?

6 A. The interview notes would be attached to the case file with
7 a DD5 that was done pertaining to the notes.

8 Q. And were there any methods to make sure those notes didn't
9 get lost?

10 A. Well, they would be secured in the case folder with a metal
11 clip.

12 Q. Are you familiar with the term Rosario material?

13 A. Yes, I am.

14 Q. Can you tell us what that is?

15 MS. OKEREKE: Objection, your Honor.

16 THE COURT: I'll allow it. It's hardly important, but
17 go ahead. It may be important. It may be worthwhile having
18 jury to understand, adding to their legal education. It's the
19 name of the case, for your information, and you are going to
20 tell us what that case says, which came into being a rule.

21 A. Rosario material would be any written documents pertaining
22 to a specific case.

23 Q. Is that something that has to be turned over to the defense
24 lawyer for a criminal defendant?

25 MS. OKEREKE: Again, your Honor, defendants object to

86JMMANT

Scott - direct

1 this line of questioning. It is completely out of the scope of
2 what this case is about and a malicious prosecution claim, your
3 Honor.

4 THE COURT: I hope you remember that tomorrow morning.
5 I'll allow this. You can answer or move on. Do
6 whatever you choose.

7 Q. Sir, can you answer that?

8 A. Any written material would be available for the defense
9 that I'm aware of.

10 Q. Sir, would it be acceptable procedure for a detective who
11 is reassigned to put a case folder in a locker room and not
12 advise other detectives that it's there?

13 A. No.

14 Q. Have you ever heard of an entire -- for how many years were
15 you with the police force?

16 A. Almost 21.

17 Q. Have you ever heard of a case file disappearing?

18 A. Not really.

19 Q. Sir, from your experience would it be unusual for an entire
20 case file to disappear?

21 A. Yes.

22 Q. And, sir, while you were at the 43rd, did you supervise
23 Detective Agostini?

24 A. Yes, I did.

25 Q. What, if anything, can you tell us about his ability to

86JMMANT

Scott - direct

1 maintain notes and evidence?

2 A. Having supervised many detectives, I thought that Detective
3 Agostini was excellent in his administrative duties.

4 Q. And would it be unusual for a detective with these
5 excellent skills to lose a file?

6 A. I think it would be unusual.

7 Q. Sir, I am going to direct your attention to February 12,
8 2001. Did you respond to 1700 Metropolitan Avenue in response
9 to a call?

10 A. Yes, I did.

11 Q. Sir, while you were in route did there come a call over the
12 radio that identified the victim as a Parkchester security
13 officer or SPO?

14 A. I believe there was such a radio transmission.

15 Q. And did you receive that transmission before you arrived on
16 the scene?

17 A. I believe that I did.

18 Q. Sir, while you were on the scene were you approached by any
19 detectives?

20 A. I was approached by several, yes.

21 Q. And were you approached by detectives regarding a possible
22 suspect?

23 A. No. No.

24 Q. Did the detectives indicate that they believed that Anthony
25 Manganiello may have been involved in the homicide?

86JMMANT

Scott - direct

1 THE COURT: When?

2 MR. JOSEPH: On the scene on February 12, 2001.

3 A. If I could just clarify, you're asking me what the
4 detectives were thinking?

5 Q. What information did they convey to you? Let me rephrase
6 it to make it simpler.

7 Sir, at some point did you learn from some detectives
8 that Mr. Manganiello was going to be brought to the 43rd
9 Precinct?

10 A. Yes I did.

11 Q. How you did you learn that?

12 A. I was approached by a detective who relayed that there was
13 a person of interest made a gesture towards the plaintiff that
14 this was the deceased partner and that he may have some
15 relevant information pertaining to the case.

16 Q. What was the gesture he made?

17 A. After speaking to me he kind of made a facial gesture like
18 nodding towards your plaintiff.

19 Q. Kind of opening his eyes and winking a little bit?

20 A. No winking. Maybe raised his eyebrows to make sure that I
21 was acknowledging that he wanted to leave the area.

22 Q. And, sir, you understood that he was suggesting to you that
23 Mr. Manganiello was somehow involved in the homicide, correct?

24 A. I don't know what you mean by involved, but he was a person
25 who may provide information on it, yes.

86JMMANT

Scott - direct

1 Q. Sir, while you were at the scene on February 12, 2001, did
2 you receive reports of information that detectives learned
3 while doing a canvass?

4 A. I may have, yes.

5 Q. And were you made aware of a witness, a porter named Walter
6 Cobb?

7 A. I remember the porter part. I don't remember the name,
8 sir.

9 Q. Sir, was it conveyed to you that while you were at the
10 scene on February 12, 2001 that the porter saw anybody leave
11 the basement?

12 A. I vaguely remember that, yes.

13 Q. Sir, was he able -- at the time was the porter able to
14 identify anybody?

15 A. I don't know.

16 Q. Sir, isn't it true that the detectives did not convey to
17 you that they knew who, if anybody, Mr. Cobb saw leaving the
18 basement?

19 A. That I don't remember either, sir.

20 Q. Sir, at the point in time when you left the scene was there
21 any information that in any way tied Anthony Manganiello to the
22 shooting of Albert Acosta?

23 A. Not that I'm aware of, no.

24 Q. Sir, on February 12, 2001, did you become aware of any
25 evidence that suggested in any way that plaintiff was involved

86JMMANT

Scott - direct

1 in the death of Albert Acosta?

2 A. No.

3 Q. Sir, for how long were you Mr. Agostini's supervisor?

4 A. Under a year.

5 Q. During the time you were his supervisor did he ever report
6 to you that a confidential informant named Terrence Alston
7 provided him with false information?

8 A. I don't remember that, no.

9 Q. Sir, when plaintiff was rearrested in April 2001, did you
10 ever learn of any evidence that created probable cause to link
11 Anthony Manganiello to the death of Albert Acosta?

12 A. I don't remember that either, sir.

13 MR. JOSEPH: That's all I have.

14 THE COURT: Any cross?

15 MS. OKEREKE: Yes, your Honor.

16 CROSS-EXAMINATION

17 BY MS. OKEREKE:

18 Q. Mr. Scott, when did you leave the 43rd Precinct?

19 A. I believe it was before September 2001.

20 Q. Did you have any ideas as to whether there was any
21 renovation work at the 43rd Precinct?

22 A. No.

23 THE COURT: When you left? I assume that's the end of
24 the sentence, that she had completed the sentence.

25 THE WITNESS: No. I found out afterwards there was,

86JMMANT

Scott - cross

1 but not before I was there.

2 Q. What did you find out happened?

3 MR. JOSEPH: Objection. Unless he has personal
4 knowledge.

5 THE COURT: It's my fault. When you left the precinct
6 there had been no renovation done, to your knowledge?

7 THE WITNESS: When I left the precinct.

8 THE COURT: Yes. I assume that corresponds pretty
9 much to when you got out or left the department.

10 THE WITNESS: I had one more assignment after leaving
11 the 43. I heard that there was renovation --

12 THE COURT: We don't want you to tell us what you
13 heard. That's his objection. I gather the answer is, when you
14 left in September you were not aware of any renovation?

15 THE WITNESS: Correct.

16 THE COURT: We move on after that major point.

17 Q. Now, as a lieutenant commander with the NYPD, what
18 obligation, if any, in your opinion, what obligation, if any,
19 does a detective have to track or keep track of the case file
20 after that detective leaves a precinct?

21 A. He has no obligation.

22 Q. And what obligation, if any, does a detective have to keep
23 track of the case file if they are no longer assigned to a
24 case?

25 A. They don't have.

86JMMANT

Scott - cross

1 O. Now, did you review the DD5s or any of the DD5s related to
2 this case?

3 A. Yes, I did.

4 Q. I am showing you what's been marked as Defendants' R-8.

5 MR. JOSEPH: This is over objection, your Honor.

6 THE COURT: Can we identify it.

7 MS. OKEREKE: It's Defendants' Exhibit R-8.

8 THE COURT: Maybe you will give it to me can I see it.
9 I'll admit it over the objection.

10 (Defendants' Exhibit R-8 received in evidence)

11 Q. Lieutenant Scott, who prepared that DD5?

12 A. It looks like a Detective Al Palacios, assigned to Bronx
13 homicide task force.

14 Q. When was that document created or prepared?

15 A. Date of this report is 2/26/01.

16 Q. February 16, 2001?

17 A. Yes, ma'am.

18 Q. Was this DD5 created in connection with the Albert Acosta
19 homicide?

20 A. Yes.

21 Q. If you could please read for the jury, what does that DD5
22 indicate?

23 A. It is an interview of Parkchester security personnel.

24 Q. Could you please read for the jury paragraph 7 on the
25 second page of that DD5?

86JMMANT

Scott - cross

1 A. Harry Plaza has SPO status, has been a security officer in
2 Parkchester for the last five years, works midnights, 12 to 8.
3 He was off duty on Monday. He has worked with Acosta for two
4 years on the 4 to 12 shift and also worked with Manganiello for
5 eight months before he went to days. He has heard Manganiello
6 mention that he has a carry permit. He also knows that
7 Manganiello had an incident with Officer Hicks and the
8 supervisors were aware and they received some type of
9 disciplinary action. But there was another inside the locker
10 room with Manganiello and Acosta after the Hicks incident that
11 we broke up and no supervisor was notified. It was a shoving
12 match and we had to pull them apart.

13 Q. And would this DD5 be a part of the case file?

14 A. Yes, it would be.

15 Q. What happens to DD5s after a detective finishes his
16 investigation?

17 A. What he does is he breaks them down and there are several
18 copies, and he perforates the top and he puts it into a case
19 folder with a metal clip.

20 Q. And would this information then be given to the district
21 attorney's office?

22 A. Yes, it would, at some time.

23 MS. OKEREKE: Thank you. Defendants have no more
24 questions.

25 THE COURT: Redirect?

86JMMANT

Scott - cross

1 MR. JOSEPH: Brief.

2 REDIRECT EXAMINATION

3 BY MR. JOSEPH:

4 Q. Sir, is there a procedure for what happens to a case file
5 that a detective is working on when he leaves a precinct?

6 A. Yes. He would submit it in a basket in the supervisor's
7 room for a review, or if there was nothing to review he would
8 put it in the appropriate file area.

9 Q. Regardless, when a detective leaves the precinct, was there
10 a procedure to maintain the case file so that it didn't get
11 lost?

12 A. When he leaves the precinct to go to another assignment or
13 when he leaves the precinct for the day?

14 Q. Another assignment.

15 A. He puts the case file in a file folder area, a filing
16 cabinet or in a supervisor's basket, and the supervisor would
17 reassign the case.

18 Q. As you sit here right now, did you know whether that
19 occurred in this case?

20 A. No, I don't.

21 Q. Would it be the responsibility of the detective who is
22 leaving the precinct to take steps to secure the case file
23 prior to leaving?

24 A. Other than filing it where I told you they do --

25 Q. That's what I'm asking. Is it the responsibility of the

86JMMANT

Scott - redirect

1 detective who is filing -- who has the file to appropriately
2 file it before he leaves the precinct?

3 A. I would say so, yes.

4 Q. Sir, you were asked about this DD5 concerning Mr. Plaza.
5 Is there any indication on the DD5 when this occurred?

6 A. There should be, yes.

7 Q. Does it say?

8 A. On the 16th.

9 Q. Does the DD5 say when this shoving match allegedly
10 occurred?

11 A. It says that there was another shoving match after the
12 Hicks incident.

13 Q. Sir, is there a date when this occurred?

14 A. No.

15 Q. So this could have happened a year before Mr. Acosta was
16 shot?

17 MS. OKEREKE: Objection.

18 THE COURT: When did the Hicks episode occur?

19 MR. JOSEPH: Do you want a representation?

20 THE COURT: Maybe he knows it from reading it. All I
21 want to be clear about is, the reason we are letting any of
22 this in, really, is on a little flimsy basis, it seems to me.
23 But if it's far away from the time of the incident in question,
24 then it really ought not be given any weight by the jury. So
25 the only reason that he's asking these questions is because he

86JMMANT

Scott - redirect

1 can't tell when it happened, and if it was long ago it should
2 be given less weight. I think they have the picture, unless
3 you can do better. You're welcome to do better.

4 MR. JOSEPH: Judge, we have spoken to counsel. We can
5 stipulate that the Hicks event occurred in 1999.

6 THE COURT: This was before that.

7 Q. Is that correct, sir?

8 THE COURT: That's what it says.

9 A. Yes.

10 MS. OKEREKE: I believe it indicates it occurred
11 after.

12 THE COURT: Whatever it says, Lieutenant, I am not
13 trying to put the words after in your mouth. Was it after or
14 was it before the Hicks incident?

15 THE WITNESS: It was after the Hicks incident,
16 according to the DD5.

17 Q. And according to the DD5, it occurred some time in relation
18 to the Hicks incident, correct?

19 A. It doesn't really specify.

20 THE COURT: Don't guess.

21 Q. As far as we know, this alleged incident happened two years
22 before Acosta was shot?

23 MS. OKEREKE: Objection.

24 THE COURT: Sustained.

25 Q. By the way, sir, did Mr. Plaza testify before a grand jury?

86JMMANT

Scott - redirect

1 A. I have no knowledge of that.

2 Q. Did Mr. Plaza testify before trial, at Mr. Manganiello's
3 trial?

4 A. Again, I have no knowledge of that.

5 MR. JOSEPH: Thank you.

6 THE COURT: Anything? You're excused. Thank you very
7 much.

8 (Witness excused)

9 THE COURT: What's next?

10 MR. JOSEPH: Judge, plaintiff would call John
11 McGovern.

12 JOHN P. MCGOVERN,

13 called as a witness by the Plaintiff,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. JOSEPH:

17 Q. Sir, on February 12, 2001, were you employed by the City of
18 New York?

19 A. Yes.

20 Q. What was your position?

21 A. I was a sergeant.

22 Q. In February of 2001, where were you assigned?

23 A. The 43rd Precinct detective squad.

24 Q. From when to when were you there?

25 A. Somewhere between 1999, the end of '99 to some time around

86JMMANT

McGovern - direct

1 2001.

2 Q. And, sir, were you in what's known as a supervisory
3 position at the time?

4 A. Yes.

5 Q. And did you become involved in the investigation into the
6 death of Albert Acosta?

7 A. Yes.

8 Q. And on February 12, 2001, did you respond to the scene of
9 1700 Metropolitan Avenue?

10 A. Yes.

11 Q. And did you become aware that Mr. Manganiello was being
12 brought to the 43rd Precinct from the scene?

13 A. Yes.

14 Q. Sir, why was he being brought from the scene to the 43rd
15 Precinct?

16 A. There was a witness that had been interviewed that had
17 heard at least one shot and had saw Mr. Manganiello leave the
18 basement area.

19 Q. Sir, was he being arrested at the time?

20 A. Was he being arrested at the time?

21 Q. Correct.

22 A. Well, he was being brought into custody for questioning.

23 Q. Was Mr. Manganiello being brought back from the scene
24 because he was being arrested for the death of Albert Acosta?

25 A. Certainly, Mr. Manganiello was arrested that particular

86JMMANT

McGovern - direct

1 night.

2 Q. My question to you is, on February 12, 2001, at the point
3 in time that Anthony Manganiello was being brought back to the
4 43rd Precinct, was he being arrested?

5 A. Yes.

6 THE COURT: Did anybody read him his Miranda rights?

7 THE WITNESS: Sir, I wasn't present when
8 Mr. Manganiello was taken into custody. I was covering the
9 crime scene, so I'm not aware of that.

10 Q. And he was taken into custody at the scene, correct?

11 A. I don't recall.

12 Q. Sir, let me show you your deposition, page 32, line 25 and
13 just ask you if this refreshes your recollection, line 25 to
14 the next page.

15 A. That's correct. You asked me a question about was
16 Mr. Manganiello in the cell at the point in time you arrived
17 back at the 43rd Precinct, and that's correct. When I got back
18 to the 43rd Precinct, he was in the cell. So at that point if
19 he's in the cell he is in custody and he's under arrest.

20 Q. Sir, while you were at the 43rd Precinct, was there a
21 procedure for maintaining case files?

22 A. Procedure for maintaining case files?

23 Q. Specifically homicide files.

24 A. Homicide files were maintained separately from the other
25 files or the other cases that were coming in.

86JMMANT

McGovern - direct

1 Q. How were they maintained?

2 A. They had a separate homicide case file in the precinct.

3 Q. And were these cases itemized? Were they categorized in
4 some way?

5 A. In general, the cases were at some point categorized as
6 different crimes, and the numbers that would come in.

7 Q. So would the case files be marked in some way to identify
8 them?

9 A. Yeah. They would normally be homicide No. 1 of the year,
10 No. 2, No. 3, No. 4, No. 5, No. 50.

11 Q. Sir, what was the procedure, if any, for maintaining a case
12 file after it was -- an arrest was made?

13 A. The case would be closed to an arrest, A1, or A2, or A3,
14 depending how many people. That would be the closing code.
15 They would be required to do a DD5. And the case would be
16 closed. The case would then be filed until the district
17 attorney would need the case.

18 Q. Sir, based on your experience, is it unusual for an entire
19 case folder to disappear?

20 A. It would be unusual, yes.

21 Q. Sir, while you were at the 43rd Precinct, was it proper
22 police procedure to consider someone a suspect because a lawyer
23 had been called for them?

24 A. No.

25 MR. JOSEPH: That's all I have. Thank you.

86JMMANT

McGovern - direct

1 THE COURT: Anything from the defense?

2 MS. OKEREKE: Yes, briefly, your Honor.

3 CROSS-EXAMINATION

4 BY MS. OKEREKE:

5 Q. Mr. McGovern, do you currently work for the New York City
6 Police Department?

7 A. Yes, I do.

8 Q. What is your current rank with NYPD?

9 A. Lieutenant commander detective.

10 Q. How long have you been a lieutenant commander detective?

11 A. Since June of 2007.

12 Q. What do you do as a lieutenant commander detective?

13 A. I'm currently the commanding officer of the police
14 impersonation investigations unit out of internal affairs or
15 group 51.

16 Q. And what do you do in that position?

17 A. Basically, I run a group. I have about, including myself,
18 18 people, and I oversee home invasion robbery investigations
19 as well as solicitations throughout the city that come in
20 through the internal affairs bureau, as well as any other
21 crimes that may occur that the chief of internal affairs deems
22 should come to my group.

23 Q. How long have you worked with NYPD?

24 A. This coming July 15 will give me 22 years of service.

25 Q. And of those 22 years, how many years did you serve in a

86JMMANT

McGovern - cross

1 supervisory role?

2 A. I became a supervisor back in February of 1998.

3 Q. So approximately over a decade?

4 A. Yes.

5 Q. And were you also serving in a supervisory role in February
6 2001?

7 A. Yes, I was.

8 Q. What were your duties in connection or in your supervisory
9 capacity in connection with the Albert Acosta homicide?

10 A. Basically, I had been working that particular day or tour,
11 and my primary responsibility on that particular day was I
12 supervised the crime scene, which people would come and several
13 things that had to be completed there, and basically when that
14 was all completed I headed back to the precinct.

15 Q. Did you have any other activities that you conducted in the
16 course of this investigation?

17 A. At this point all I remember is I did supervise the crime
18 scene, which took a decent amount of time to complete. I
19 supervised that. There were certainly some other things going
20 on, but I wasn't privy to that, being at the crime scene, to
21 make sure that the canvasses were completed, that the crime
22 scene was taken care of by the crime scene unit. And then,
23 like I said, once that was all wrapped up, I headed back to the
24 precinct. As I testified earlier, that's when I saw
25 Mr. Manganiello in the cell.

86JMMANT

McGovern - cross

1 I also had an involvement later on in the case where I
2 was involved in the arrest of Mr. Manganiello.

3 Q. And during the arrest were any guns drawn on the plaintiff?

4 A. I don't really recall any guns being drawn. I do remember
5 we stopped them in a gas station. We asked them to step out of
6 the car and he was placed under arrest.

7 Q. Was this what you would consider a normal arrest then?

8 A. Yeah. There was nothing unusual about that arrest.

9 Q. In the course of the Albert Acosta investigation did you
10 review or have any occasion to review any DD5s?

11 A. I reviewed a lot of DD5s and I'm sure I reviewed some of
12 the DD5s. I don't have any independent recollection of that.
13 Again, about 5,000 cases a year came in there and I was one of
14 the supervisors there, and I did review a lot of cases.

15 Q. And the case detectives or individuals assigned to lead or
16 head a case, do you know approximately how many cases the case
17 detectives handle on a regular basis?

18 A. Per year, when I was assigned to the Bronx detectives,
19 catching detectives were probably handling anywhere from 3 to
20 400 cases a year.

21 THE COURT: One of the witnesses suggested that he
22 handled between 20 to 25 at a time. Does that sound
23 reasonable?

24 THE WITNESS: That certainly does sound reasonable,
25 your Honor.

86JMMANT

McGovern - cross

1 Q. In handling those 20 to 25 cases at a time and the 3 to 400
2 cases in a year, what sort of activities or what are the duties
3 of a case detective in handling those matters?

4 A. The detective would be required to be assigned a case and
5 would be required to investigate, interview the complainants,
6 follow up on any leads that came out of the case. And if there
7 was enough information to go forward with an arrest, an arrest
8 would be made. Unfortunately, on all cases arrests aren't made
9 and some cases go unsolved. So really their responsibility is
10 to investigate the case, interview people, and see if they
11 could develop leads.

12 Q. Did detectives work together in the course of conducting an
13 investigation?

14 A. Certainly, they would go out in the field with other
15 detectives, yes.

16 Q. And at any given time, what is the maximum number of
17 detectives that could be working on a given matter at a time?

18 A. A minimum would be two. On a high end you could have
19 several, into the twenties, depending on the seriousness of the
20 case. There could be a quite a number of detectives that come
21 out, depending if it's a homicide, a shooting. There are
22 several things that need to be completed. People need to
23 respond to hospitals, canvasses of areas. Some areas are quite
24 large and that would require more detectives to canvass larger
25 areas with bigger buildings.

86JMMANT

McGovern - cross

1 So you could have quite a number of detectives working
2 on any particular case at one time. On some of the lower end
3 cases it would be probably two detectives and it could expand.
4 It would only be one catching detective. On the bigger cases
5 one catching detective and all the information would be fed
6 into him and he would be required to maintain the case.

7 Q. After that case detective finishes with an investigation,
8 what are his duties with respect to his case file?

9 A. The case file would then -- it would be filed, it would be
10 closed and signed off on, and it would be maintained at the
11 command.

12 Q. Is that case file at some point given to a district
13 attorney?

14 A. On occasion if there is an arrest associated with the case,
15 the case would or could be given to the district attorney at
16 some point, yes.

17 Q. So in the case of a homicide arrest, the case file would be
18 given to the district attorney's office?

19 MR. JOSEPH: Objection, leading.

20 A. Absolutely. If the district attorney wanted to review the
21 case file and needed it for further trial preparations or court
22 proceedings, absolutely.

23 MS. OKEREKE: Thank you.

24 THE COURT: Anything from anybody?

25 You're excused. Thank you very much.

86JMMANT

McGovern - cross

1 (Witness excused)

2 THE COURT: Ladies and gentlemen, I have another
3 matter. Why don't we adjourn now for lunch and come back at
4 1:30. See you then.

5 Have a good lunch. Remember my concern about not
6 speaking amongst yourselves about this case or to anybody else.
7 See you at 1:30.

8 (Recess)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

86JMMANT

McGovern - cross

AFTERNOON SESSION

1:40 p.m.

(Jury present)

THE COURT: Does the plaintiff have a witness?

MR. JOSEPH: Your Honor, plaintiff calls Derrick
Parker.

DERRICK J. PARKER,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JOSEPH:

Q. Sir, on February 12, 2001, were you employed by the City of
New York?

A. Yes.

Q. What capacity?

A. I was the detective assigned to the intelligence division.

Q. And, sir, did you come in contact with an informant named
Terrence Alston?

A. Yes.

Q. When you first met Mr. Alston were you already in the
intelligence division?

A. Yes.

Q. From when to when were you in the intelligence division?

A. From 1999 until 2001.

Q. And while you were in the intelligence division were you

86JMMANT

Parker - direct

1 investigating any narcotics cases?

2 A. To the best of my knowledge, no.

3 Q. How did Mr. Alston become a confidential informant?

4 A. I met him through another informant.

5 Q. Was that informant in Rikers Island?

6 A. Yes.

7 Q. Was Mr. Alston a member of any criminal organizations?

8 A. He had affiliation with the Bloods.

9 Q. Was he a member of the Bloods?

10 A. I believe he was, yes.

11 Q. After coming in contact with Mr. Alston did you meet with
12 him at Rikers Island?

13 A. Yes.

14 Q. Was that in February 2001?

15 A. Yes.

16 Q. At that point in time had Mr. Alston been in Rikers Island
17 for several months?

18 A. He had been in Rikers Island for I don't know how long.

19 Q. The first time you met Mr. Alston did he tell you he had
20 some information about a murder of a security guard in the
21 Bronx?

22 A. Yes.

23 Q. And did you discuss what information he had?

24 A. Yes.

25 Q. At any point did Terrence Alston ever tell you that he

86JMMANT

Parker - direct

1 agreed to kill a Parkchester security guard for money?

2 A. No.

3 Q. And if he said that, is that the sort of thing that you
4 would recall?

5 A. Yes, I would have remembered that.

6 Q. But Terrence Alston never said that to you, correct?

7 A. Correct.

8 Q. And did Terrence Alston ever tell you that he knew someone
9 who sold a gun to the person involved in the murder of the
10 Parkchester security guard?

11 A. I believe that came up later, yes.

12 Q. I'm asking you, when you met with Terrence Alston did he
13 tell you that?

14 A. No.

15 Q. And that came up after Mr. Alston had spoken with
16 detectives from the 43rd Precinct, correct?

17 A. Correct.

18 Q. By the way, the first time the story about Mr. Alston
19 agreed to commit a murder for money came up after Mr. Alston
20 had met with detectives from the 43rd Precinct, correct?

21 MR. ZUCKERMAN: Objection.

22 MR. JOSEPH: I'll withdraw the question.

23 Q. Sir, was Mr. Alston given anything in consideration for
24 providing information?

25 THE COURT: That you know of.

86JMMANT

Parker - direct

1 Q. That you know of.

2 A. That I don't know.

3 THE COURT: Nothing by you?

4 THE WITNESS: Nothing by me.

5 MR. JOSEPH: I have nothing further.

6 THE COURT: Anything from the defendant?

7 MR. ZUCKERMAN: Yes, your Honor.

8 CROSS-EXAMINATION

9 BY MR. ZUCKERMAN:

10 Q. Detective Parker, you're retired, is that correct?

11 A. Yes.

12 Q. And you were formerly employed by the NYPD, correct?

13 A. Yes.

14 Q. When did you retire?

15 A. January of 2002.

16 Q. And how long had you been an active member of the NYPD?

17 A. Twenty years.

18 Q. And you were a detective?

19 A. Yes, I was.

20 Q. How many years were you a detective for?

21 A. Thirteen or 14.

22 Q. Were you ever in the 43rd detective squad?

23 A. No.

24 Q. Did you ever have occasion to work with anyone in the 43rd
25 detective squad?

86JMMANT

Parker - cross

1 A. No.

2 Q. Do you know defendant Agostini?

3 A. No.

4 Q. Do you know defendant Abate?

5 A. No.

6 Q. Do you know defendant Martinez?

7 A. No.

8 Q. Do you know defendant Nieves?

9 A. No.

10 Q. Do you know defendant Perez?

11 A. No.

12 Q. Did you have experience during your career with persons
13 known as confidential informants?

14 A. Yes.

15 Q. Tell the jury what a confidential informant is.

16 A. A confidential informant is someone who comes into contact
17 with the police in some way where he or she may be involved in
18 a criminal organization or might be involved with someone who
19 is on the street who has information about crimes that were
20 committed by someone. They want to provide information or they
21 usually give it to either -- a member of the police department.

22 Q. So some confidential informants have engaged in criminal
23 activities, correct?

24 A. Correct.

25 Q. How did you come to work with confidential informants?

86JMMANT

Parker - cross

1 A. I started working with confidential informants when I was
2 assigned to the narcotics division.

3 Q. Did you find confidential informants helpful in your work
4 as a detective?

5 MR. JOSEPH: Objection, relevance.

6 THE COURT: Sustained.

7 Q. Did you find that confidential informants gave you valuable
8 information from time to time?

9 MR. JOSEPH: Objection. Relevance to this case.

10 THE COURT: I'll sustain the objection. Keeping an
11 eye on relevant evidence, it's not any easier for me than it is
12 for you, which is why I keep reading you the elements. They
13 are mostly for my benefit or somewhat for my benefit, too.

14 Q. Did you have authority to enter into any type of agreements
15 with confidential informants?

16 MR. JOSEPH: Objection.

17 THE COURT: Overruled. It's a yes or no question.

18 A. No.

19 THE COURT: Good. Maybe we can move along.

20 Q. Did there come a time that you came in contact with a
21 person by the name of Terrence Alston?

22 A. Yes.

23 Q. When was that?

24 A. February of 2001.

25 Q. How did that occur?

86JMMANT

Parker - cross

1 A. I spoke with another informant who is in Rikers Island who
2 informed me that Mr. Alston had some information about a
3 homicide.

4 Q. Did you then go to Rikers Island to meet with Mr. Alston?

5 A. Yes, I did.

6 Q. Before going to Rikers Island to meet with Mr. Alston did
7 you contact anyone at the 43rd detective squad?

8 A. Not before, no.

9 Q. Did you have any knowledge of the murder of Albert Acosta
10 before going out to meet with Mr. Alston at Rikers Island?

11 A. No.

12 Q. Did you go to Rikers Island to meet with Mr. Alston by
13 yourself or with someone?

14 A. With someone.

15 Q. Where did you meet Mr. Alston once you got there?

16 A. At the correctional gang intel trailer.

17 Q. Did you meet with him alone?

18 A. No.

19 Q. Who did you meet him with?

20 A. My partner, Detective Bryant, was with me.

21 Q. How long did you meet with him for?

22 A. I think I was with him up until about an hour.

23 Q. What did he tell you?

24 A. He told me he had information concerning a homicide that
25 happened in the Parkchester section of the Bronx.

86JMMANT

Parker - cross

1 Q. What did you do with that information at that time?

2 A. I called the 43rd detective squad and asked them if in fact
3 they did have a homicide.

4 Q. What did they tell you?

5 A. They told me that they did, and they asked me where I was
6 and that they would come out to Rikers Island.

7 Q. Did they send detectives to Rikers Island immediately?

8 MR. JOSEPH: Objection. If he knows.

9 THE COURT: If he knows.

10 A. Yes.

11 Q. Did they do that?

12 A. Yes.

13 Q. Did you wait for them to get there?

14 A. Yes.

15 Q. When they arrived what happened?

16 A. I introduced them to Terrence Alston, and I let them
17 interview him in the room.

18 Q. Were you present for that interview?

19 A. No.

20 Q. Did you wait outside while that happened?

21 A. Yes.

22 Q. Did you enter into any agreements with Mr. Alston?

23 A. No.

24 Q. Did you subsequently have any further contacts with

25 Mr. Alston?

86JMMANT

Parker - cross

1 A. Yes.

2 Q. Can you tell the jury what contacts you had?

3 A. I saw him later on at the district attorney's office in the
4 Bronx.

5 THE COURT: How did that come about?

6 THE WITNESS: I was asked to come down to the DA's
7 office.

8 THE COURT: By who?

9 THE WITNESS: I think it was the ADA.

10 Q. Could you tell the jury about that meeting?

11 A. I went down to the DA's office because I was the person
12 that was handling Mr. Alston as an informant, so he wanted me
13 there to be comfortable to speak with the district attorney.

14 Q. And what was the purpose of that meeting, as far as you
15 know?

16 A. I believe it was some information pertaining to the
17 homicide with another individual.

18 THE COURT: Who else was there?

19 THE WITNESS: The ADA, there was an individual there
20 that had some information, and a detective from the 43rd.

21 THE COURT: Alston was the individual that had some
22 information?

23 THE WITNESS: Alston was there and there was another
24 individual.

25 Q. Do you know who the individual was who had information?

86JMMANT

Parker - cross

1 A. I don't remember his name offhand. I think his first name
2 was Mark.

3 Q. Did you know what information that person had to provide?

4 A. I believe it was information about a gun.

5 Q. Do you know anything further about that information?

6 A. I don't recall.

7 THE COURT: Who was the direct from the 43rd? Do you
8 remember?

9 THE WITNESS: I don't remember, your Honor.

10 THE COURT: You see him in the courtroom there on the
11 right-hand side at that second table?

12 THE WITNESS: I remember one of the individuals. I
13 don't know if he was the detective at the time.

14 Q. Were you present for the interview that the ADA conducted?

15 A. I was there, but I don't think I was there the entire time.

16 Q. So you were not in the interview room the entire time, is
17 that correct?

18 A. That's correct.

19 Q. Do you know if Mr. Alston was in the interview room the
20 entire time?

21 A. That I don't recall.

22 Q. Do you know if he was in the interview room at all?

23 A. Yes, I believe he was there.

24 Q. But you don't know for how long, though, correct?

25 A. Correct.

86JMMANT

Parker - cross

1 Q. Did you ever come to learn what information Mr. Alston had
2 provided concerning the homicide in the Bronx?

3 MR. JOSEPH: Objection. At what point.

4 A. I don't recall.

5 Q. Other than what you've testified to?

6 THE COURT: Overruled.

7 Q. Other than what you've testified to here today, did you
8 ever work with the 43rd detective squad in investigating the
9 homicide in the Bronx as you've discussed?

10 A. No.

11 MR. ZUCKERMAN: Nothing further, your Honor.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. JOSEPH:

15 Q. Sir, you spoke with Mr. Alston for an hour at that first
16 meeting, correct?

17 A. Correct.

18 Q. In that whole hour he didn't mention anything about a
19 security guard hiring him to do a professional hit, correct?

20 A. No, he did not.

21 MR. JOSEPH: Nothing further.

22 THE COURT: You're excused. Thank you very much.

23 (Witness excused)

24 MR. JOSEPH: Your Honor, I call Miriam Nieves.

25 MIRIAM NIEVES,

86JMMANT

Parker - redirect

1 called as a witness by the Plaintiff,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. JOSEPH:

5 Q. On February 12, 2001, were you employed by the City of New
6 York?

7 A. Yes.

8 Q. Were you a police officer assigned to the 43rd Precinct?

9 A. Yes, I was.

10 Q. Were you partnered with Officer Alex Perez?

11 A. Yes.

12 Q. Did you see Officer Perez in the courtroom?

13 A. Yes.

14 Q. Can you describe him, please?

15 A. He's in the back, far right.

16 Q. His hand in front of his face?

17 MR. ZUCKERMAN: Objection.

18 A. Yes.

19 Q. Prior to working at the police department did you also work
20 at a Parkchester security guard?

21 A. Yes.

22 Q. Isn't it true that Parkchester security guards don't patrol
23 the areas together, they walk around separately?

24 A. Sometimes.

25 Q. I'll come back to that.

86JMMANT

Nieves - direct

1 Now, on February 12, 2001, did you respond to a call
2 at 1700 Metropolitan Avenue?

3 A. Yes.

4 Q. And on that call was there any indication that the victim
5 may have been a Parkchester security guard?

6 A. I don't recall that.

7 Q. Let me see if I can jog your memory.

8 Let me show you page 174 of the trial transcript, line
9 20 through 25. Does that refresh your recollection as to
10 whether the radio transmission indicated the possibility that
11 the victim may have been a Parkchester security officer?

12 A. It states here, I said, I remember it saying either
13 Parkchester security or officer, unknown whether it was
14 security or police officer.

15 Q. And that's testimony you gave under oath, correct?

16 A. Yes.

17 Q. By the way, it's testimony that you gave on
18 cross-examination during trial, correct?

19 A. I don't know when I gave this testimony.

20 Q. But according to your testimony, ma'am, there was some
21 mention on the radio call that the victim may have been a
22 Parkchester security guard, is that correct?

23 A. According to my testimony, yes.

24 THE COURT: Is that wrong?

25 THE WITNESS: I don't recall it, your Honor.

86JMMANT

Nieves - direct

1 THE COURT: You don't doubt that's what you said.

2 THE WITNESS: If it's here, I have to have said it.

3 THE COURT: We are having a little trouble getting
4 that answer from some of your colleagues. That's why I was
5 asking you.

6 Q. Ma'am, did you testify before the grand jury that indicted
7 Anthony Manganiello?

8 A. Yes.

9 Q. I'll draw your attention to Exhibit 38. Please turn to the
10 page TP-12. You see your testimony there, ma'am? Are you able
11 to find TP-12?

12 A. I find it. It doesn't say it's my testimony. It starts on
13 TP-9.

14 Q. Does your testimony continue on TP-12?

15 A. Yes.

16 Q. I want to direct your attention to TP-12. Did you give
17 testimony before the grand jury that you encountered Anthony
18 Manganiello in the basement of 1700 Metropolitan Avenue?

19 A. Yes.

20 Q. And did you give testimony that at the point in time you
21 saw Anthony Manganiello he was coming into the basement?

22 A. Yes.

23 Q. Did you give testimony that between line 4 and 9 that
24 Anthony Manganiello made a remark to you in the basement of
25 1700 Metropolitan Avenue?

86JMMANT

Nieves - direct

1 A. Yes.

2 Q. And what statement did you testify that Mr. Manganiello
3 made to you?

4 A. He said something about going into the room, that was his
5 partner in there.

6 Q. Did you, in fact, testify that he said, I don't want to go
7 in there, that's my partner? Were those your words, ma'am?

8 A. I'm reading it. He said I don't want to go in there. He
9 said that's my partner in there.

10 Q. That was the testimony you gave before the grand jury?

11 A. Yes.

12 Q. I am also going to direct your attention to page -- same
13 page, lines 18 through 21. Did you also testify before the
14 grand jury that there was no broadcast of the -- that the
15 victim was a security officer?

16 A. Not that I heard.

17 Q. Is that what your testimony was?

18 A. Not that I heard of. That's my testimony.

19 Q. Did you also testify, line 22, beginning on line 22 that it
20 was unknown that the victim was a Parkchester security officer
21 when other officers arrived?

22 A. Say that again. What line?

23 Q. Beginning on line 22, continuing to the following page,
24 line 3.

25 A. What was your question?

36JMMANT

Nieves - direct

1 Q. Well, did you testify that when other Parkchester officers
2 arrived it was unknown that the victim was a Parkchester
3 security officer?

4 MS. OKEREKE: Objection, your Honor.

5 THE COURT: She has read it all. She can answer.
6 I'll allow it. Overruled.

7 A. If it was known?

8 Q. Correct.

9 A. No.

10 Q. That's the testimony you gave, correct, it was not known?

11 A. It was not known.

12 Q. But at that point in time you had already heard a radio
13 transmission indicating that the victim may have been a
14 Parkchester security officer?

15 MS. OKEREKE: Objection, your Honor.

16 THE COURT: Overruled.

17 Q. Isn't that correct?

18 A. Might be.

19 Q. Ma'am, did you ever mention that to the grand jury?

20 MS. OKEREKE: Objection, your Honor.

21 A. Not that I remember.

22 THE COURT: When you see your lawyer stand up -- maybe
23 she doesn't stand well. Wait until I rule before you answer.

24 Q. Ma'am, did you give this testimony to imply that

25 Mr. Manganiello had knowledge of the victim's identity prior to

86JMMANT

Nieves - direct

1 going into the room?

2 MS. OKEREKE: Objection, your Honor.

3 THE COURT: Overruled.

4 Q. For what reason did you give that testimony?

5 A. Which testimony? Repeat it, please.

6 Q. The testimony you gave before the grand jury. When you
7 told the grand jury that there was no radio transmission that
8 you heard, which identified the victim as a Parkchester
9 security officer and then testified that Mr. Manganiello in the
10 basement of 1700 Metropolitan Avenue told you that there was a
11 partner in the room before he entered the room, what, if
12 anything, were you trying to convey to the jury?

13 MS. OKEREKE: Objection, your Honor.

14 THE COURT: I don't understand what you're objecting
15 to. The element here that is most disturbing to, I believe,
16 all of us is that we have to show -- indeed the plaintiff has
17 to show that a defendant or more than one acted maliciously, if
18 indeed this woman testified to the effect that -- differently
19 than she had heard only a few minutes before, that seems to me
20 to go to that element.

21 MS. OKEREKE: Your Honor, to the extent that plaintiff
22 is mischaracterizing the testimony that she actually gave --

23 THE COURT: I think it's right in front of her, ma'am.
24 If indeed he is mischaracterizing it, A, she can look, she
25 seems to know how to read; and, B, you can correct it. It is

86JMMANT

Nieves - direct

1 no grounds for me to sustain your objection.

2 MS. OKEREKE: Very well, your Honor.

3 Q. Ma'am, were you trying to convey to the grand jury that
4 Mr. Manganiello had some sort of guilty knowledge?

5 A. No.

6 Q. Ma'am, did you ever give testimony that you found this
7 statement odd?

8 A. Which statement?

9 Q. The statement which you claim Mr. Manganiello made to you.

10 A. Yes.

11 Q. For what reason did you find it odd?

12 A. At the time I was not aware that there was a broadcast of
13 who it was in the room.

14 Q. Did you make any efforts to find out before you testified
15 before the grand jury?

16 A. No.

17 Q. And, ma'am, were you trying to imply that Mr. Manganiello
18 could not have known who was in the room unless he was the
19 murderer?

20 MS. OKEREKE: Objection, your Honor.

21 THE COURT: Overruled.

22 A. I found it odd when he said he knew who was in the room. I
23 wasn't implying that he was in or he wasn't. Just struck me as
24 odd that he knew who was in the room.

25 Q. Why would you find it odd?

86JMMANT

Nieves - direct

1 A. To my knowledge, at that point, no one knew who was in that
2 room.

3 Q. In fact, ma'am, there had been a broadcast only a few
4 minutes earlier that would have identified the victim as a
5 Parkchester security officer, correct?

6 A. Not that I remember.

7 Q. Ma'am, if in fact there was such a broadcast over the
8 Parkchester radio that identified the victim as a Parkchester
9 security officer, it wouldn't be weird or odd that
10 Mr. Manganiello would know who was in the room, would it?

11 MS. OKEREKE: Objection.

12 THE COURT: I'll sustain that objection.

13 MR. JOSEPH: I'll move on.

14 Q. By the way, ma'am, when you worked at Parkchester did you
15 know Rolf Ohle?

16 A. Yes.

17 Q. Was he in the basement when you arrived?

18 A. I don't remember.

19 Q. But you knew who he was, correct?

20 A. Yes.

21 Q. You knew him to be a sergeant for the Parkchester security
22 force?

23 A. Yes.

24 Q. Was he making broadcasts over the radio as you were walking
25 into the room?

86JMMANT

Nieves - direct

1 A. I don't remember him there.

2 THE COURT: You worked at Parkchester before you
3 joined the police department, is that right?

4 THE WITNESS: Yes.

5 THE COURT: What were the years that you worked at
6 Parkchester?

7 THE WITNESS: I believe it was '90 to '92, year and a
8 half.

9 THE COURT: When did you join the police department?

10 THE WITNESS: '92.

11 Q. Did you also testify that you saw dust on Mr. Manganiello's
12 uniform before he entered the room on page TP-12, lines 4
13 through 9?

14 A. Where does it say --

15 Q. TP-12, lines 4 through 9.

16 A. You're asking about something on his jacket. I don't see
17 it here.

18 Q. Can I have it back for a second.

19 THE COURT: Did you read your grand jury testimony
20 before you came here today?

21 THE WITNESS: Some time ago.

22 THE COURT: How long ago?

23 THE WITNESS: Maybe a week ago.

24 THE COURT: But you looked at it all?

25 THE WITNESS: Yes, read through it.

86JMMANT

Nieves - direct

1 THE COURT: Did he review it with the Corp. Counsel at
2 all, with your lawyer?

3 THE WITNESS: Yes.

4 Q. Page TP-13, lines 4 through 9 were you asked this question
5 and did you give this answer:

6 "Q. When you saw Officer Manganiello entering into the hallway
7 area where the room where Officer Acosta was located, did you
8 make any note, mental note or otherwise, of the condition of
9 his uniform, or did you notice anything unusual about it?

10 "A. I saw dust, the white dust."

11 Q. Were you asked that question and did you give that answer?

12 A. I believe so.

13 Q. And you also testified at trial, at Mr. Manganiello's
14 criminal trial, correct?

15 A. Yes.

16 Q. That was on June 29, 2004, right?

17 A. I don't remember the date, but yes.

18 Q. On direct examination -- ma'am, why don't you turn to page
19 150. Do you have that in front of you? On lines 5 to 10 did
20 you testify that the radio transmission which you received said
21 officer shot?

22 A. Which line?

23 Q. Page 150, lines 5 through 10.

24 A. Radio run of an officer shot.

25 Q. On your direct examination did you give any indication as

86JMMANT

Nieves - direct

1 to the possibility that it might have been a Parkchester
2 security officer on the radio run?

3 MR. JOSEPH: I'll rephrase the question.

4 Q. Ma'am, on that direct testimony, on page 150, did you give
5 any indication to the jury that the radio transmission may have
6 also said possible Parkchester security authority?

7 MS. OKEREKE: Objection, your Honor.

8 THE COURT: Overruled.

9 A. I remember it as radio run, officer shot.

10 Q. That's not my question, ma'am. My question is, did you at
11 any point on page 150 during your --

12 THE COURT: Did you talk to these people -- we will
13 talk to you after the jury goes away.

14 MR. JOSEPH: I'm sorry, your Honor?

15 THE COURT: I'm not talking to you.

16 Q. Ma'am, on your direct examination on page 150, when you
17 were asked what the radio run said, did you give any indication
18 that it may have identified the victim as a Parkchester
19 security officer?

20 A. No.

21 Q. And you knew this was a murder trial, correct?

22 A. Yes.

23 Q. And the consequences for a criminal defendant in a murder
24 trial can be quite severe, correct?

25 A. Yes.

86JMMANT

Nieves - direct

1 Q. And you know it was important to make full and accurate
2 disclosure of what you knew, correct?

3 MS. OKEREKE: Objection, your Honor.

4 THE COURT: Sustained.

5 Q. Ma'am, I am going to show you what's been marked into
6 evidence as Exhibit 11. Wasn't the radio transmission --
7 didn't it, in fact, say possible Parkchester security shot at
8 location? Wasn't that the exact transmission that was
9 broadcast over the radio?

10 A. Yes.

11 Q. Now, ma'am, when you arrived at the scene at 1700
12 Metropolitan Avenue, did you and your partner, Officer Perez,
13 walk into the basement together?

14 A. I believe we did.

15 Q. And where was Officer Perez when you claim you had this
16 conversation with Mr. Manganiello?

17 A. Officer Perez had walked out in front of me. I was behind
18 her, behind Officer Perez.

19 Q. Behind her?

20 A. Behind Officer Perez.

21 Q. But you were behind officer Alex Perez?

22 A. Yes.

23 Q. How far behind Officer Perez were you?

24 A. I can't say. I know she walked out first. I'm sorry.
25 Officer Perez walked out first.

86JMMANT

Nieves - direct

1 Q. Ma'am, isn't it in fact true that you didn't see Anthony
2 Manganiello -- strike that.

3 Ma'am, isn't it in fact true that at the point in time
4 that Anthony Manganiello arrives on the scene you're already
5 outside of the basement of 1700 Metropolitan Avenue?

6 A. Negative.

7 Q. And is it your testimony that you and Officer Perez are not
8 together when you first see Anthony Manganiello?

9 A. Right.

10 Q. And at trial did you also testify on page 157, line 15 that
11 you had a conversation with Anthony Manganiello?

12 A. State that question between.

13 Q. Let me make it easier. Why don't you give me the
14 transcript. Ma'am, on page 159, line 4, did you testify to a
15 statement that Anthony Manganiello made to you or allegedly --
16 that you claim he made to you in the basement?

17 THE COURT: You got to speak up. I don't think the
18 jury can hear you if you don't use the microphone.

19 MR. JOSEPH: I'll repeat it.

20 Q. Ma'am, on page 159, line 4, do you testify that Anthony
21 Manganiello made a statement to you?

22 A. Yes.

23 Q. What statement, if any, do you say he made to you?

24 A. He said something in regards to going into the room, that
25 that was his partner.

86JMMANT

Nieves - direct

1 Q. Ma'am, after you saw Mr. Manganiello in the basement, he
2 walked past you, correct?

3 A. After we spoke he stood there in the hallway. I walked
4 past him.

5 Q. But he was walking into the direction of where Mr. Acosta's
6 body was, correct?

7 A. Officer Acosta's body was in the room. We were still in
8 the hallway outside the room.

9 Q. But after you passed Mr. Manganiello, he keeps walking
10 towards that room, correct?

11 A. I don't think he did.

12 Q. Ma'am, did you ever testify to the exact opposite?

13 A. Show me where.

14 Q. In a pretrial hearing on page 109.

15 A. 109?

16 Q. Right. Lines 9 through 17, pretrial hearing. That's
17 trial, ma'am.

18 A. Line 9?

19 Q. Correct, through 17.

20 A. It states here --

21 THE COURT: It's a yes or no question.

22 A. Repeat the question.

23 Q. Did you or did you not testify that after Mr. Manganiello
24 made the statement, he walked past you towards the room where
25 Acosta was found?

86JMMANT

Nieves - direct

1 A. Yes.

2 Q. And that was four years ago, correct?

3 A. Four years ago, yes.

4 Q. That was under oath?

5 A. Yes.

6 Q. You said the exact opposite of what you said here today
7 just a few minutes ago, correct?

8 MS. OKEREKE: Objection.

9 THE COURT: Overruled.

10 Q. Is that correct, ma'am?

11 A. Yes.

12 Q. By the way, in that same pretrial hearing did you also
13 offer testimony that Mr. Manganiello said he wanted to go into
14 the room, his partner was in there, page 108?

15 A. What line?

16 Q. 11 through 15.

17 A. Yes.

18 Q. But you told the grand jury that he said that he didn't
19 want to go in there, correct?

20 A. Correct.

21 Q. Did you also testify at that same hearing that you didn't
22 know -- strike that.

23 Ma'am, when you saw the uniform, the Parkchester
24 uniform on Mr. Acosta, did you recognize it?

25 A. I don't remember.

86JMMANT

Nieves - direct

1 THE COURT: Was it a uniform like you had worn?

2 THE WITNESS: It's the same uniform as PD.

3 Q. They have patches on it?

4 A. They have patches.

5 Q. You saw a patch on Mr. Acosta's uniform, correct?

6 A. Yes.

7 Q. You knew it was a Parkchester security officer at the point
8 in time you got into the room, right?

9 A. I can't recall. His arms were underneath him. I don't
10 remember seeing the patches.

11 Q. Did you tell Officer Perez that it was a Parkchester
12 security officer?

13 A. I don't remember.

14 Q. By the way, did you also testify at that hearing that none
15 of the radio transmissions identified the victim as a
16 Parkchester security officer, on page 109?

17 THE COURT: You better give her the line.

18 MR. JOSEPH: Line 4 through 8.

19 A. Your question again? I'm sorry.

20 Q. On page 109, lines 4 through 8, did you testify that none
21 of the radio transmissions identified the victim as a
22 Parkchester security guard?

23 A. Yes.

24 Q. And, turn to page 134.

25 A. 134?